S. HRG. 98-502

NOMINATIONS OF RICHARD H. FRANCIS AND RALPH L. STANLEY

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

THE NOMINATIONS OF RICHARD H. FRANCIS, TO BE PRESIDENT, SOLAR ENERGY AND ENERGY CONSERVATION BANK; AND RALPH L. STANLEY, TO BE THE ADMINISTRATOR OF THE URBAN MASS TRANSPORTATION ADMINISTRATION

NOVEMBER 10, 1983

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CONTENTS

	Page
Opening remarks of Chairman Garn	1
Statements of:	
Senator Warner	6
Senator Trible	6
Senator Hecht	7
Senator Hawkins	37
Senator Mattingly	43
Senator D'Amato	48
NOMINEE, RICHARD H. FRANCIS	
Prepared statement of Richard H. Francis	2
Testimony opposing the nomination of Richard H. Francis by:	
Scott Sklar, political director, Solar Lobby	9
Steven Ferry, chairman of the board of directors, the Solar Lobby	12
Biographical sketch of nominee	30
NOMINEE, RALPH L. STANLEY	
Prepared statement of Ralph L. Stanley	39
Response to written questions of Senator Heinz	56
Response to written questions of Senator D'Amato	59
Biographical sketch of nominee	88

NOMINATIONS OF RICHARD H. FRANCIS AND RALPH L. STANLEY

THURSDAY, NOVEMBER 10, 1983

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, D.C.

The committee met at 1:30 p.m., in room SD-538, Dirksen Senate Office Building; Senator Jake Garn (chairman of the committee) presiding.

Present: Senators Garn, D'Amato, Hecht, Trible, and Lautenberg.

OPENING REMARKS OF CHAIRMAN GARN

The CHAIRMAN. The Banking Committee will come to order.

The purpose of this afternoon's hearing is to consider the nomination of Richard Francis to be President of the Solar Energy and Energy Conservation Bank, and second, Ralph Stanley to be the Administrator of the Urban Mass Transportation Administration.

Mr. Francis, we are happy to have you before the committee today.

If you have an opening statement that you wish to make, we would be happy to receive it at this time.

[The complete statement follows:]

STATEMENT OF RICHARD H. FRANCIS
before the
UNITED STATES SENATE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

Mr. Chairman and Members of the Committee, I am pleased to appear before you today to discuss my nomination to be President of the Solar Energy and Energy Conservation Bank.

I have been serving as the chief operating officer of the Bank since its reactivation in the Department last year, first as Comptroller, then as Manager. I have been actively engaged in all activities related to expediting start-up activities as well as running the day-to-day operations of the Bank. I believe it would be useful to cover briefly the manner and rationale by which this has been accomplished.

The Energy Security Act of 1980 which established the Bank is very broad in scope and provides for a great variety of uses for the funds. Both matching grants and loan buy-downs are authorized for residential, commercial, agricultural, and multifamily buildings. A wide variety of energy conservation measures and solar energy systems are authorized. Low- and moderate-income persons are the primary focus of the Bank's program.

Preliminary moves were made to establish the Bank during the final months of the Carter Administration. At the beginning of President Reagan's term, the Administration assessed the situation and came to the conclusion that the Bank was unnecessary and the funds appropriated to the Bank would be better spent in other ways. A number of similar programs already exist at the Federal level. In addition, the free market encouraged by tax credits has offered incentives for conservation which have already taken hold. On this basis, the President requested a rescission of FY 1981, funds which was granted by Congress. In addition, the multibillion dollar authorization was reduced to $50 million per year in the Omnibus Budget Reconciliation Act of 1981. $25 million was provided for FY 1982 and again the Administration requested rescission of

appropriated funds. When the statutory period ended without action by Congress, we felt it was incumbent on HUD to carry out the wishes of Congress by reactivating the Bank.

The Department is fully committed to a good faith effort to achieve this objective within the current scope of the Bank's program. As I pointed out, Congress greatly reduced the Bank's authorization in the Omnibus Reconciliation Act. Based on this significantly reduced funding, we have targeted the Bank's activities to those most in need of assistance by focusing primarily on retrofitting low- and moderate-income residential dwellings with cost-effective energy conservation and passive solar measures.

From among the options provided by the statute, we decided the most effective and expeditious means to deliver assistance to this targeted group was through state energy conservation and solar energy programs. Taking advantage of the many existing energy-related activities at the state and local levels, we seek to deliver assistance by integrating the Bank's program into these efforts. By minimizing overhead costs, the maximum amount of Federal dollars are being made available to the most needy, in keeping with the targeting priorities of this Administration. Equally important, we hope to stimulate the states and local communities to become more active in developing self-sustaining programs best suited in each case to their particular needs.

Shortly after the Bank was reestablished, a Notice of Funding Availability was issued, inviting states to submit proposals for this purpose. We received proposals from 48 states, the District of Columbia, and four territories. An evaluation panel carefully reviewed and graded each proposal. It selected the most cost-effective features and recommended a reasonable funding level for each. On the basis of a report from the evaluation panel, the Board of Directors was presented with a series of possible funding options. At a meeting of

the Board last January 17th, actions were taken to provide funding for 48 states, two territories, and the District of Columbia. Interim regulations were published and we undertook to establish a cooperative agreement with each state and territory to provide the legal framework within which the program will function. As of today we have cooperative agreements with 45 states, the District of Columbia, Puerto Rico, and the Northern Mariana Islands.

As President of the Bank, my principal responsibility will be to implement the law: to establish and effectively operate the Bank's program in accordance with Congressional mandate. This will be a continuation of my work as Manager of the Bank. I believe the record of the last year, appended to this testimony, shows that this is being done and that we are fulfilling our responsibilities under the law. We have started virtually from ground zero because of the earlier rescission and have succeeded in building a functioning, productive organization. We have developed a sound and effective approach to employing the Bank's funds to achieve the objectives of the 1980 Act within the scope of the present authorization and appropriation.

Now that the Bank has been set up and is operating smoothly, I am confident of my ability to help make the most effective use of available funds to achieve the Act's basic objective of reducing the Nation's dependence on foreign energy sources.

Thank you. I will be glad to answer any questions you may have.

MAJOR ACCOMPLISHMENTS OF THE SOLAR BANK UNDER RICHARD H. FRANCIS

A. STAFFING

1. Assembled staff to manage day to day affairs of the Bank as of June 1982.

B. REGULATIONS

1. Completed assessment of environmental impact of interim regulations on November 16, 1982.

2. Prepared interim regulations and submitted to Congress on November 30, 1982.

3. Revised interim regulations and resubmitted to Congress on April 12, 1983.

4. Published interim regulations in the Federal Register on May 31, 1983.

C. PROGRAM IMPLEMENTATION

1. Prepared an action plan and preliminary program plan and presented these to the Board of Directors of the Bank in a meeting on July 29, 1982, with recommendations.

2. Published a Notice of Funding Availability in the Federal Register on August 27, 1982, pursuant to recommendations made to and adopted by the Board of Directors at the July 29, 1982, meeting.

3. Distributed copies of the NOFA to Advisory Committee members requesting their comments.

4. Developed an evaluation plan for determining acceptability of proposals received from States.

5. Held four Board meetings of the Bank's Board of Directors consisting of Secretary Pierce and designees from Agriculture, Commerce, Treasury and Energy.

6. Reviewed and evaluated proposals from 48 States and 5 territories and submitted a summary report and recommendations to the Board of Directors on December 10, 1982 for a December 17th meeting.

7. Awarded funding to 48 States, two territories, and the District of Columbia on January 17, 1983.

8. Obligated $30.4 million by cooperative agreements with program participants by September 30, 1983.

9. Established Treasury Financial Communications System with all program participants.

10. Arranged for appointment of six new advisory committee members to replace those with terms expiring on January 17, 1983.

The CHAIRMAN. Thank you, Mr. Francis.

Before I ask you any questions, I would like to ask unanimous consent that the statement of Senator John Warner supporting your nomination be placed in the record.

STATEMENT OF SENATOR WARNER

Senator WARNER. I am here today to introduce to the committee Dr. Richard H. Francis of my home State of Virginia to be the Director of the Solar Energy and Energy Conservation Bank.

Richard Francis has served as Chief Operating Officer of the Bank since its reactivation in the Department last year, first as Comptroller, then as Manager. He has been engaged in all activities related to startup activities from providing discussion materials at board meetings establishing Bank policy to testifying before the Congress, while running the day-to-day operations of the Bank.

Prior to serving in this capacity, he was Senior Policy Adviser to the Assistant Secretary for Policy, Development and Research at HUD. Again, his responsibilities entailed the development and implementation of new policies, programs, and projects on housing matters of national impact.

In his career in the military, higher education, and housing areas, he has been responsible for managing within the scope of both large and small organizations and effecting policy changes. This has included putting three organizations into operation from their inception, twice as Chief Operating Officer. He has a technical background, gained during studies in engineering at the U.S. Naval Academy. In addition, during his military career, he was directly involved in research and development both in the areas of equipment and policy development.

Dr. Francis brings a wide variety of experiences to this position, and I am pleased to present him to the committee today.

The CHAIRMAN. Senator Paul Trible is here in person and would like to make a comment.

STATEMENT OF SENATOR TRIBLE

Senator TRIBLE. Thank you, Mr. Chairman.

I welcome my constituent, Dick Francis, here today. He has spoken eloquently about his own experience and qualifications for this post, but let me lend my support as well and indicate that I know of no one that has served with more dedication and distinction.

Just to complete the record, Mr. Chairman, let me add a few words. Dick Francis is a graduate of the U.S. Naval Academy, holds a master's degree from Yale, and a doctorate from the University of Maryland.

As you well know, Mr. Chairman, he served as the Chief Operating Officer of the Bank since its reactivation last year, first as comptroller and then as manager. He has been engaged in a wide variety of activities relating to expediting startup of this organization, establishing Bank policy, testifying before the Congress, while running the day-to-day operations of the Bank.

Prior to serving in this important role he was a senior policy adviser to the Assistant Secretary for Policy Development for Re-

search of HUD. Again, his responsibilities entailed the development and implementation of policies, programs, and projects on housing matters of national impact.

In addition to his public accomplishments, I know Dick Francis to be a devoted family man, a proud father of three children, and he has also involved himself in the life of his community and State by being active in Scouting and local civic organizations.

So I am pleased to support his nomination and commend his nomination to the full committee, and I urge prompt confirmation.

Mr. FRANCIS. Thank you, Senator.

The CHAIRMAN. Thank you, Senator Trible.

Senator Hecht, do you have any comments you wish to make?

OPENING REMARKS OF SENATOR HECHT

Senator HECHT. Just reading your qualifications and your biography here, I am sorry I caused you to lose $2,000. On page 4, you put out $2,000 for my political opponent. [Laughter.]

Senator TRIBLE. Perhaps I should reexamine that.

Senator HECHT. I figured we needed a joke once in a while.

Mr. FRANCIS. He wasn't your opponent at that time, Senator.

Senator HECHT. I am very impressed with your qualifications. That won't deter me from voting for you.

Mr. FRANCIS. Thank you, sir.

The CHAIRMAN. Mr. Francis, before I ask you the standard questions, may I have you stand and be sworn.

[Witness sworn.]

The CHAIRMAN. Will you avoid not only any conflict of interest while you are President of Solar Bank, but even the appearance of conflict of interest?

Mr. FRANCIS. Yes.

The CHAIRMAN. Do you agree to appear before this and all other duly constituted committees of Congress when requested?

Mr. FRANCIS. I will.

The CHAIRMAN. Mr. Francis, given the relatively small resources that are available to the Solar Bank—I know you said you felt you could run it effectively and use those limited resources wisely—can you give the committee more detail on just how you feel you can be cost effective in operating with the limited funds that you do have?

Mr. FRANCIS. Yes, Mr. Chairman. When we looked at the program last year we realized that this was a broad scope program and that it involved primarily the interface between the Bank and the consumer via thousands of financial institutions, and we saw that it had a multibillion dollar authorization which had been scoped down to $50 million. We also realized that there were a number of other programs at the Federal level, both in the Department of Energy, the Department of Health and Human Services, the Veterans' Administration, the Department of Agriculture, and so on, which did many of the same things that the Bank was designed to do, and that is to stimulate energy conservation and to promote solar systems.

We also realized that we couldn't possibly operate the Bank as it was originally conceived in light of the size of the appropriation. I thought that the most effective way of handling this was to try to

operate through the State energy offices or their equivalent, to both provide the funds directly through the process by which we felt they could be most effectively used in the State, by the State government, which understands the State needs and the State programs better than we do and would probably direct those funds to consumers more expeditiously and with a smaller amount of overhead requirement, and therefore we decided to operate the program using the option within the statute providing that States could be financial institutions.

So our purpose is not only to help the consumer, but even more broadly, to encourage States to be more self-reliant in the operation of energy conservation programs, and for this reason we indicated in our notice of funding availability that these are supposed to be self-sustaining programs without Federal involvement in the future. For that reason we felt that we could get the States started, get those States that have a program ongoing augmented, get other States who are not now very much involved in energy conservation to be involved, and then indicate that this really, because of the unique nature of each State's requirements, is a State-level problem, and therefore that is the reason we handled it this way, and I think for that reason we have used the $30 million presently authorized to the States in a very effective way, and I am encouraged by the fact that 45 States, two territories, and the District of Columbia are presently engaged in operating programs.

The CHAIRMAN. So you feel in the relatively brief time you have been with the Solar Bank that you are accomplishing the goals that you set?

Mr. FRANCIS. Yes. I am encouraged by the fact that we now have established an agreement with 45 States. I think the jury is still out, however, as to how well this program is going to be received. We have allocated this $30 million in January. We encouraged the States to develop their operating plans during the course of the spring; we issued regulations in May; and we made the funds available through cooperative agreements in the beginning of June.

I must report to you, Mr. Chairman, that we now have cooperative agreements with the States, but we have not really provided any of the funds to the States because they have not requested them. You can lead a horse to water, but you can't make him drink. This program requires that a consumer request a loan and that some financial institution be willing to make that loan and then the Bank's funds could subsidize that loan, but it requires those first two steps, and I am not certain that the circumstances haven't changed over the last 4 or 5 years with the proliferation of energy programs, more stability in energy conservation and the understanding of people of their needs for energy conservation.

So I think the jury is still out as to how well this program is going to function.

The CHAIRMAN. Mr. Francis, there is opposition to your nomination, and I have been asked by the solar lobby to put their testimony in the record, which I will do, opposing your nomination.

[The document follows:]

Testimony Opposing the Nomination

of

Richard Francis as President of the
Solar Energy and Energy Conservation Bank (HUD)

before

U.S. Senate Committee on Banking, Housing and Urban Affairs

by

Scott Sklar, Political Director
Solar Lobby

November 10, 1983

INTRODUCTION

As Political Director of the Solar Lobby, this nation's largest renewable energy consumer organization, I must strongly protest the nomination of Richard Francis as the new president of the Solar Energy and Energy Conservation Bank. The Solar Lobby opposes Mr. Francis' nomination for four basic reasons:

1) Mr. Francis opposes the program which he has been nominated to run and he has described the Solar Energy and Energy Conservation Bank as "costly and unnecessary." Clearly, it is not in the best interest of the American public to have an individual supervising a program which he believes is unneeded. (see attached article)

2) Mr. Francis has actively stonewalled the will of Congress and the Federal Courts in having this program carried out in an expeditious manner and meetings its mandate to provide a loan subsidy for energy conservation and acitive and passive solar applications. Although active solar to heat water has a three-year payback in a large portion of the United States, and in northern climates could produce large savings on home utility bills, the Bank's regulations only provide for assistance for passive solar applications. The Bank has advised the state energy offices administering this program that they may fund only energy conservation projects at this moment.

3) Mr. Francis has approved state plans to allocate the Solar Energy and Energy Conservation Bank monies which are contrary to the law. Several states are using the money in secondary markets (specifically prohibited) or the monies are not going directly to recipients. Mr. Francis has been arbitrary in his approval of the state plans and in the development of the guidelines and regulations for the dispersement of the Bank's funds. I can only interpret these actions as a way to keep this program from becoming in any way effective as it was originally intended by Congress.

4) Mr. Francis, under his past position, has made it difficult for states to administer this program. As a result, three states have returned their allocations in protest of the guidelines. Of the $30.4 million so far obligated, Wyoming, Mississippi and Delaware have returned $120,000, $100,

000, and $125,000 respectively, which I understand will be returned to the U.S. Treasurery rather than to reprogram this money to further other Bank programs.

The Solar Energy and Energy Conservation Bank was designed to meet the needs to the middle class by cutting their energy bills at a time when utility costs are skyrocketing. We have federal programs to help people at 125-percent of poverty level and below weatherize their homes, and we have residential tax credits for energy cosnervation and renewables for those of the upper income levels. But most Americans needed assistance in some other way. By providing a program which uses financial institutions as the main vehicle to promote energy conservation and solar applications coupled with a federal interest subsidy to make these loans more affordable, the Solar Lobby believes that the Bank is the most effective way to reach this population.

Mr. Richard Francis who has been comptroller, manager, and soon-to-become president of the Solar Energy and Energy Conservation Bank, has had a poor management record. On the last pages of this testimony, a list of key dates of the Bank are listed. If you review this list it is clear that this program has been intentionally mismanaged if not willfully subverted over the last two years. Some states have returned their allocations because of the misgiuded regulations crafted by Bank personnel, and a portion of the funds allocated by the Bank are not in compliance with federal law. The Solar Energy and Energy Conservation Bank could be a program that uses a small amount of federal monies to leverage a larger amount of private money for domestic energy development. The Bank could be a program that left the cost-effectiveness decisions to the local bank whichis equipped to make such determinations rather than some office in the federal government.

However, the Solar Energy and Energy Conservation Bank deserves continued Congressional support. The Solar Lobby recommends most strongly that oversight hearings be held on the Bank's activities and until then, Mr. Richard Francis' nomination be held. At present. Richard Francis has not carried out Bank operation effectively or within the law. Indeed, all Mr. Francis had to do was to ask members of his own advisory committee and could have prevented these mistakes early on. As the enclosed article indicates, Mr. Richard Francis has taken the view that the Bank is unnecessary rather than make it work effectively as it was intended by Congress.

[From the Renewable Energy News, October 1983]

SOLAR BANK PRESIDENT SAYS BANK "UNNECESSARY"

WASHINGTON.—The man President Ronald Reagan last month nominated as president of the Solar Energy and Energy Conservation Bank says he finds the bank "costly and unnecessary." However, Richard Francis says he will follow congressional mandate and continue a careful policy of expending taxpayers' monies. That includes, he says, his desire to see passive solar technologies increasingly funded by the bank.

"From all indications at Housting and Urban Development," the bank's sponsoring agency, he says, "active solar is just not cost effective . . . it has not reached the point of technical perfection."

Francis assumes his position amidst charges that while he was bank manager, his previous position held since Reagan came to office, the bank repeatedly delayed spending congressionally-appropriated monies. "Dick Francis has actively stonewalled the will of congress, and has made it known he opposes the program he is about to head up," was the news release from the Solar Lobby that greeted his nomination.

Francis denies the charges. "The implication is that I've delayed the program, and that is just not the case," he says. "In fact, as it stands now, the money is not being used. There is no indication that people will borrow money to do what the bank was set up to do."

The Solar Bank was founded by the Carter administration to help middle and lower income families reduce the high upfront cost of solar and conservation expenditures. The Reagan administration, after twice trying to rescind congressionally-mandated budgets, settled for re-writing the bank regulations, which congress still has not accepted because of criticism that the regulations severely limit the bank's ability to lend.

As of last month the bank had disbursed $30 million to states and had $11 million in FY 1983 monies and $25 million in FY 1984 monies to disburse before September 1984. Francis says the remaining funds will be spent "sometime this fall" after HUD assesses how states are using their 1983 allocations.

Francis replaces Robert W. Karpe who was acting president since Reagan took office. Karpe will remain as president of the U.S. Government National Mortgage Corporation (Ginnie Mae).

TESTIMONY OF STEVEN FERREY, CHAIRMAN OF THE BOARD OF DIRECTORS
SCOTT SKLAR, POLITICAL DIRECTOR
OF THE SOLAR LOBBY, WASHINGTON, D.C.

I. EXECUTIVE SUMMARY

Thank you very much Mr. Chairman for the opportunity for us to appear before you today. We would like to review this executive summary with you and have the rest of our testimony included as part of the hearing record. I am the Senior Energy Counsel of the National Consumer Law Center, headquartered in Boston, Massachusetts. I specialize in my work on financing cost-effective conservation, load management and renewable energy measures. I have been involved closely in the development and implementation of the Solar Energy and Energy Conservation Bank (the "Bank"). The President appointed me to a three-year term, which is now half completed, as one of five members of the Energy Conservation Advisory Committee of the Bank.

I have served as an advisor on cogeneration and dispersed power technologies to the U.S. Congress Office of Technology Assessment. I am Chairman of the Board of Directors of the Solar Lobby, a nationwide organization comprised of 60,000 members from every state in the nation. Scott Sklar, who is testifying with me today, is the Solar Lobby's Political Director. It is a pleasure to be able to share with you today our thoughts on the lack of progress on the Solar and Conservation Bank.

Scott Sklar, Political Director

In January of this year, the Department of Housing and Urban Development announced that $30.4 million would be transferred to forty-eight states to carry out the Bank mandate. This represents about three-quarters of the $41.8 million of FY '82 and FY'83 appropriation remaining in the Bank.

The remaining $11 million was to be given to those states which had the best programs sometime later in the fiscal year. Approximately one week after this announcement, the Reagan budget indicated that the $11 million dollars was to be transfered to the $1.9 billion Low-Income Energy Assistance Program. Obviously, this $11 million will not have much impact on a $2 billion program, but rather it is a not-so subtle attempt to close down the Bank.

The Solar Lobby has been instrumental in developing a bipartisan legislative initiative entitled the "Solar Energy National Security and Employment (SENSE) Act." H.R. 1595 was introduced by Representatives Timothy Wirth (D-CO) and Silvio Conte (R-MA) and each of the four titles were also introduced as separate bills with its own set of bipartisan prime sponsors. H.R. 1599 which is Title IV of the SENSE Act titled, the "Consumers Incentives Act of 1983" was introduced by Representatives Stephen Neal (D-NC) and Stewart McKinney (R-CT). In this Title, the Solar Energy and Energy Conservation Bank is extended to 1990, and certain modifications are made to the original authorization of the bank to insure that the program is carried out under the original intent of Congress.

I cannot underscore any more the need to have programs that assist the middle class in cutting their home energy bills. The Bank is a unique program that deserves broad Congressional support.

Steven Ferrey, Solar Lobby Board Chairman

In the attached testimony, I have detailed in some length why the Solar Energy and Energy Conservation Bank is necessary and how the Bank program has not been administered with the intent of Congress in mind. The following points need to be emphasized:

I. The Solar and Conservation Bank fills gaps in the market as does no other program. A consultant from HUD calculates that the residential renewable energy tax credit is effectively unavailable in full to 78 percent of the American taxpayers.

II. The Administration has failed to execute requirements for prompt establishment and operation of the Bank. It has refused to issue operating regulations (as required by Congress no later than March 30, 1981). As required by law, the Bank has failed to convene each Advisory Committee and the Bank has failed to issue annual reports in a timely manner.

III. The Administration has failed to spend the Bank's funds as required. In the Federal District Court, a bipartisan group of Congressmen, the Solar Lobby, members of the Bank's two Advisory Committees, lenders, builders, and several national organizations, successfully brought suit last summer against the Reagan Administraion for not spending the funds appropriated by Congress. Judge Haight, reviewing the legislative history and Congressional mandate, ordered the Administration to spend these funds as expeditiously as possible. Now, more than one year after initiation of this suit, not only has the Administration failed to spend this money expeditiously but they are attempting to transfer money out of the program. This clearly raises grave legal questions as to compliance with the Court's order.

IV. The Administration has failed to hire enough staff to carry out this program in an effective and responsible manner.

I know the Committee has many competing interests with ever dwindling financial resources. However energy bills are rising dramatically for many families already stretched financially. All that they ask is a chance to invest in energy conservation measures. The Solar and Conservation Bank is one of the few programs that lets the average citizen have access to conventional credit markets, as the attached Harvard Journal on Legislation article spells out in detail. The Solar and Energy Conservation Bank opens up the marketplace, through existing financial institutions, to those who need it most -- the working poor and the middle class who do not qualify for or cannot use energy tax credits.

Thank you for the opportunity to testify. Scott and I would be pleased to answer any of your questions.

II. THE SOLAR AND CONSERVATION BANK FILLS GAPS IN THE MARKET THAT NO OTHER PROGRAM REACHES

The market is not working well to deliver conservation measures to a broad section of the nation's households. I am including as an attachment to my testimony a copy of "Solar Banking: Constructing New Solutions to the Urban Energy Crisis," that appeared recently in the Harvard Journal on Legislation. Let me summarize very briefly the salient points made in this article.

First, despite the intention of the Congress, approximately half of all American households are screened off from effective access to conservation and solar energy incentives. The primary federal incentives for energy conservation and solar energy measures installed in buildings are the federal residential tax credits. The Energy Tax Act of 1978 created a 15% energy conservation tax credit, as well as a 40% renewable energy tax credit, for investments applied to a taxpayer's "principal residence." The credits are nonrefundable; they can be taken only if a taxpayer has offsetting tax liability.

Even families of moderate income cannot take the full credits. For example, a family of four earning $15,000 in 1980, taking the standard tax deductions and exemptions, would owe a federal tax liability of $1,247. Even spreading the credits over the allowed two tax years, this family would not be able to take a full $4,000 renewable energy tax credit. Landlords, unless a building they own is also their "principal residence," cannot take these tax credits. A consultant for HUD calculates that the renewable energy tax credit effectively is unavailable in full to 78 percent of American taxpayers.

This skewed use of the tax credits has occurred in practice. The following table illustrates that in 1978, 81 percent of the combined residential tax credits were claimed by taxpayers with adjusted gross incomes in excess of $15,000, even though this group represents only the top 38 percent of taxpayers. Moreover, the top 25 percent of the population, represented by taxpayers with adjusted gross incomes in 1978 of over $20,000, claimed fully 62 percent of the federal energy tax credits.

TOTAL INDIVIDUAL RESIDENTIAL CREDITS, 1978
(before limitations)

Adjusted Gross Income	Number Returns Claiming Credits (1000's)	Percent	Total Dollar Credits Claimed (1000's)	Percent
$ 0- 5,000	57.1	1%	$ 44.5	1%
5,000-10,000	436.6	7%	282.7	7%
10,000-15,000	641.3	11%	413.7	10%
15,000-20,000	1,119.6	19%	696.3	17%
20,000-plus	3,646.1	62%	2,653.0	65%
TOTALS	5,901.7	100%	$4,090.1	100%

Source: I.R.S., 1978 Statistics of Income, Table 8 (1978)

In rental housing, a new element is introduced into the market equation: the residential energy consumer is a different party from the owner. Rented dwellings constitute one-third of the total housing stock. Of these 27 million rental units, two-thirds are multifamily in design, and fully 40 percent of the multifamily dwellings are in units of ten or more per building. When rental units are individually metered, tenants, as the customers of utilities, receive the pricing signals from their usage directly. The owner experiences no direct economic incentive to undertake conserving capital improvements.

Correspondingly, in master-metered multifamily rental units, tenants have neither the economic incentive nor the legal ability to make energy efficiency changes to the

owner's building. Even in master-metered rental units, owners commonly will make no unnecessary investment unless it promises a sure two- to three-year payback, according to analysis underway by the Congressional Office of Technology Assessment. Since the federal tax credit is limited to principal residences, owners of rental buildings who do not reside in these buildings are ineligible for credits. Almost the entire rental housing stock, constituting one-third of all dwellings, in institutionally screened off from access to conservation and solar tax incentives.

The appended Harvard Journal on Legislation article goes into substantial detail about how the failure of the energy tax credits to reach renters, low-income and elderly populations simultaneously disadvantages urban regions. The consequence is loss of jobs and deterioration of the fiscal base in urban regions. For more detail on this phenomenon, I commend to your attention the appended article.

The Solar and Conservation Bank is indispensable to a balanced energy program because it fills these glaring gaps in the operation of the market. First, the Bank specifically makes tenants eligible for energy conservation assistance. Second, the amount of assistance available is inversely related to the income of the borrower. Low and moderate income households receive a greater benefit, which allows them to participate in using energy more efficiently and cuts the crippling utility bills that they now confront.

Third, cities, states and conventional lenders are allowed to participate as lenders/disbursors of Solar and Conservation Bank funds. Cities can use Bank funds to leverage other local funds for the provision and delivery of conservation and solar energy improvements. The operation of the Solar and Conservation Bank is an essential complement to market forces and tax credits to maintain an

equitable and effective energy policy.

III. THE ADMINISTRATION HAS FAILED TO EXECUTE REQUIREMENTS FOR ESTABLISHMENT AND OPERATION OF THE BANK

The Bank was created as Title V of the Energy Security Act of 1980, in June of 1980. Between October 1980 and January 1981, the administration staffed the Bank and set out to draft required regulations and to make the Bank operational. Since February 1981, the administration has refused to carry forward in any manner to see that the Bank became operational.

This refusal flies in the face of clear Congressional intent as expressed in both the authorization and appropriation for this program. In my opinion, it also violates the law. The Bank's legislation provides four clear requirements for operation, set out below, that provide a benchmark against which this Committee can judge the compliance of any administration to implement this program in a manner consistent with Congressional directive.

A. The Requirement to Issue Operating Regulations No Later Than March 30, 1981

Because of the Congressional sense of urgency to establish and operate the Bank, the Bank's authorizing statute prescribes a strict schedule for the enactment of operating regulations. The statute provides:

> As soon as practicable, but not later than 180 days after June 30, 1980, the Board shall issue such final rules and regulations as the Board determines are necessary to carry out this chapter, including rules and regulations to assure that there will be no fraud in the provision of financial assistance through grants under this

> chapter, except that any final rules and regulations with respect to multifamily residential, commercial, or agricultural buildings may be issued later than 180 days after such date but not later than 270 days after such date.

12 U.S.C. 3618. (Emphasis added.)

Thus, this statutory schedule requires all operating regulations to be in place no later than March 30, 1981. There are no exceptions to this deadline. All significant HUD regulations, including those for the Bank, undergo a 15-day review by both houses of Congress prior to promulgation. 12 U.S.C. 3604(e). The Board of the Bank promulgated a set of bylaws to govern its internal procedures, 45 Fed. Reg. 61290 et seq. (1980), as well as Advisory Committee charters, 45 Fed. Reg. 78235 et seq. (1980).

During the latter part of 1980, the Bank Board caused to be prepared and approved a 97-page set of interim final regulations to govern provision of Bank assistance for single and multifamily dwellings. These regulations were submitted for review to the committees in the Senate and in the House of Representatives that exercise jurisdiction over the Bank. The regulations were ready in mid-January 1981 for transmission to the Federal Register for publication as interim final regulations.

On January 20, 1981, new Cabinet Secretaries assumed their roles as the five members of the Bank's Board. They stopped the submission of regulations to the Federal Register. No operating regulations for the Bank have been published. The final statutory deadline passed more than one year ago. In September 1981 the Congressional Conferees on the Bank's FY 82 appropriation again unanimously directed the Chairman of the Bank Board "to expedite all Bank implementation activities by moving rapidly to publish regulations..." Conference Report No. 97-222, 97th Cong.,

1st Sess. 7 (1981). The Board has taken no action.

B. The Requirement to Convene Advisory Committees

The statute establishes two five-member Advisory Committees for the Bank--one to advise the Board on its solar energy assistance and one to advise the Board on its energy conservation assistance. 12 U.S.C. 3606. The members of each Advisory Committee are appointed by the President of the United States and serve two- or three-year terms. One member of each Advisory Committee must represent (1) consumers, (2) financial institutions, (3) builders, (4) producers or installers of the conservation or solar energy measures financed by the Bank, and (5) architectural or engineering interests. 12 U.S.C. 3606(a),(b). Individuals were appointed to fill all five positions on each Advisory Committee and all positions currently remain filled.

Each Advisory Committee is required to "convene in ordinary session four times each year." 45 Fed. Reg. 78236-7 (1980). Each Advisory Committee can convene only when called to open public meeting by the Board of Directors or by a federal employee designated by the Board. Id. The Advisory Committees have the power to hold public hearings. Id. They are required to issue an annual report before the end of each calendar year as well as to incorporate their views in the annual report the Board is required to submit to the Congress. Id., 12 U.S.C. 3617(a).

Each Advisory Committee met informally on January 15, 1981, with HUD Secretary Landrieu, then-Chairman of the Board of the Bank, and with the acting officers and staff of the Bank. Since that meeting, the Board has refused to convene meetings of either Advisory Committee.

Consequently, neither Advisory Committee has held any meetings, despite requests to HUD Secretary Pierce by committee members. The reports required to be prepared and submitted by each Advisory Committee before the end of calendar year 1981 have not been completed. The Advisory Committees have not been convened to discharge their appointed duties at any time during the current fiscal year, despite the fact that the Bank has a $21.85 million appropriation.

C. The Requirement to Issue Annual Reports

The statute requires the Board to submit to the Congress a detailed annual report:

> The Board shall submit an annual report to the Congress and to the President of the United States which includes, among other matters, the views of the President of the Bank, the Energy Conservation Advisory Committee, and the Solar Energy Advisory Committee, with respect to--
>
> (1) the operation of the Bank during the previous year;
>
> (2) the problems of the energy conservation and solar energy industries, the Federal Government, and financial institutions which may be inhibiting the operation of the Bank or the acceptance by the public of the use of residential and commercial energy conserving improvements and solar energy systems;
>
> (3) the cost effectiveness of the program in terms of expenditure, specific residential and commercial energy conserving improvements, and energy savings, using statistically valid samples of the improvements assisted under this chapter;
>
> (4) the relative number of persons from various income groups who have received financial assistance under this chapter;
>
> (5) the total energy savings achieved because of the assistance provided under this chapter, based on an estimate of such savings using a statistically valid sample; and
>
> (6) recommendations for improvements in the operation of the Bank.

12 U.S.C. 3617(a) (emphasis added).

No annual report for calendar year 1981 or for any other

> An amount equal to not less than 80 percent of the funds appropriated for a fiscal year under the authorization contained in section 3620(a) of this title shall be provided during such fiscal year for financial assistance under this chapter for the purchase and installation of residential energy conserving improvements in residential and multifamily residential buildings.
>
> An amount equal to not less than 15 percent of the funds appropriated for a fiscal year under the authorization contained in section 3620(a) of this title shall be provided during such fiscal year for financial assistance for the purchase and installation of residential energy conserving improvements in residential buildings owned by individuals whose income is less than 80 percent of the median area income, or in multifamily residential buildings with a majority of the dwelling units occupied by such individuals.

12 U.S.C. 3614(a)-(b) (emphasis added).

Providing similar assistance for solar energy equipment, the statute requires that certain percentages of the Bank's appropriation during each fiscal year be expended as follows:

> An amount equal to not less than 70 percent of the funds appropriated for a fiscal year under the authorization contained in section 3620(b) of this title shall be provided during such fiscal year for financial assistance under this chapter for the purchase and installation of solar energy systems in residential and multifamily residential buildings and for the purchase of residential and multifamily residential buildings which have such systems.
>
> An amount equal to not less than 5 percent of the funds appropriated for a fiscal year under the authorization contained in section 3620(b) of this title shall be provided during such fiscal year for financial assistance for the purchase and installation of solar energy systems in residential buildings owned by individuals whose income is less than 80 percent of the median area income, or in multifamily residential buildings with a majority of the dwelling units occupied by such individuals.

12 U.S.C. 3615(b)-(c) (emphasis added).

Despite the fact that the Bank has had a valid FY 82-83 appropriation of not less than $41.85 million for the entire duration of the fiscal year, not one penny of assistance has been made available to any household or small business for solar energy or conservation purposes. For many families and elderly persons, not eligible for public assistance for their energy bills or for their efforts to perform conservation, this refusal to make available the

period was submitted by the Board.

D. The Requirement to Staff the Bank

To implement this program it obviously is necessary to have competent staff at HUD to administer the program. The Bank is managed and supervised by a President and two Executive Vice-Presidents. 12 U.S.C. 3605. Mr. Joseph Bracewell was appointed by President Carter as Acting President of the Bank in the latter part of 1980. Ms. Nancy Naismith and Mr. Joseph Levangie were appointed acting Vice-Presidents of the Bank in the latter part of 1980. All were dismissed by the Board without replacement in January of 1981.

Moreover, the new administration reassigned existing HUD staff who were detailed to work on the Bank. Outside consultants and staff in the process of being hired to staff the Bank were terminated. In September 1981 the Appropriations Conferees unanimously chose to

> " direct the Secretary of HUD to expedite all Bank implementation activities by moving rapidly to publish regulations, secure an agent, staff the Bank, and disburse loans and subsidies at the earliest possible date."

Conference Report No. 97-222, 97th Cong., 1st Sess., at 7.

IV. THE ADMINISTRATION HAS FAILED TO SPEND THE BANK'S FUNDS AS REQUIRED

The statute makes mandatory the expenditure of specified percentages of the Bank's appropriation during each fiscal year. For energy conservation, the statute specifies that:

Bank's conservation assistance is forcing them to choose between heating their homes and feeding their families.

V. THESE FAILURES VIOLATE BOTH THE INTENT OF THE CONGRESS AND THE LAW

In enacting the Bank, the Congress expressed unambiguously its intention that the Bank hire staff, issue regulations, hire an agent and otherwise perform all functions necessary to operate the Bank and to make its funds available to the public. As I have testified, not only have the five Cabinet Secretaries who are Directors of the Bank refused to perform many of these tasks, but they have moved slowly in the tasks that they have performed. If on January 21, 1981, the new Board of Directors of the Bank had done nothing more than to allow the momentum of the Bank to continue, the Bank would long ago be operating.

But this did not occur. Consequently, the Bank still is not operating -- there are no regulations, not one dime of money has been distributed under this program and not one ceiling has been insulated -- now almost three years after enactment. The very real personal consequence of this calculated delay is that thousands of families desperately in need of conservation will be doomed to spend yet another winter unable to pay for heating their uninsulated homes. This is a tragedy -- one that has no rational explanation.

In my opinion, these actions also violate the law. Going back to a plethora of cases litigated to contest the impoundment of funds during the Presidency of Richard Nixon,

the federal courts consistently have held that the executive branch does not have discretion to withhold funds such as those of the Solar and Conservation Bank. Where legislation employs the command "shall," the federal courts have viewed this language as a nondiscretionary command to the Executive to spend:

> Statutory language that an official "shall" perform an act has been repeatedly held to be mandatory in nature. [19. "Shall" is the language of command." Boyden v. Commissioner of Patents, 142 U.S. App. D.C. 351, 441 F.2d 1041, 1043 n.3 (1971), citing Escoe v. Zerbst, 295 U.S. 490, 493, 55 S. Ct. 818, 79 L. Ed. 1566 (1935) and Richbourg Motor Co. v. United States, 281 U.S. 528, 534, 50 S.Ct. 385, 74 L. Ed. 1016 (1930).] It deprives the official of discretion and makes the commanded act a duty, a ministerial act.

Pennsylvania v. Weinberger, 367 F. Supp. 1378, 1381 n. 19.

In his March 10, 1982 transmission to the Congress of Report B-205053, the Comptroller General concurs with the mandatory nature of spending statutes that are drafted as is the Bank's statute. On February 5, 1982, the President submitted a request to the Congress to rescind the Bank's funds. Pursuant to the Budget and Impoundment Control Act of 1974, the Congress had until April 23, 1982 (45 legislative days) to rescind funds. Neither house of Congress chose to rescind. In effect, Congress has now spoken yet a third time in support of the Bank.

Yet no response has transpired at the Bank. There is no discretion in the statute for the executive to refuse to issue regulations or refuse to staff the Bank:

> Any failure during any fiscal year to provide the amount of financial assistance required by subsection (a) of this section or subsection (b) of this section shall not delay the provision of other financial assistance under this chapter.

12 U.S.C. 3614(c); see also 12 U.S.C. 3615(d).

There is also no discretion for the executive to refuse to spend mandatory program funds, even during the 45 legislative days that the President's rescission request was pending. The current appropriation for the Bank specifies that monies are appropriated "for the fiscal year ending September 30, 1982." Pub. L. 97-101. Each of these failures constitutes a serious violation of the law in my opinion.

I would be glad to entertain any questions that the Committee might have.

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SOLAR BANK: DATES, EVENTS

June 30, 1980: The Solar Bank is enacted as part of the Energy Security Act of 1980, Public Law No. 96-294 (1980).

October, 1980: President Carter appoints Acting President and two Vice Presidents to head up staff of the Bank, who promulgated a set of By-Laws to govern the Advisory Committees and a set of operating procedures for the Bank.

December 12, 1980: The President and Vice President drafted and the Bank Board approved a 97-page set of interim final regulations to govern the Bank. These regulations were submitted on December 12, 1980, for review to the appropriate committees in the Senate and House exercising jurisdiction over the Bank.

January 1, 1981: Staff has drafted regulations to operate the Bank, is ready to solicit companies to act as an agent for the Bank and within a few months begin operation.

January 13, 1981: The two 5-member Advisory Committees to the Bank, appointed by the President, met informally with HUD Secretary Landrieu and the Officers of the Bank.

January 20, 1981: Secretary Pierce, newly appointed by President Reagan, refuses to publish the already drafted regulations for the Bank, despite a Congressional mandate that these regulations be prepared no later than December 30, 1980 (for residential regulations) and March 30, 1981, (for commercial, agricultural, and multifamily regulations). Secretary Pierce terminates all remaining staff and ceases all operation of the Bank. He refuses to convene the Advisory Committees despite a requirement in Regulations that they meet four times annually. He ceases all operations of the Bank.

March 13, 1981: By letter to the other four Cabinet Secretaries who constitute the Board of Directors of the Bank, Secretary Pierce at HUD states: "After reviewing the Bank Act, I find that I cannot support its programs." Secretary Pierce asked for a written action to "permit me to wind up the business of the Bank."

May 7, 1981: HUD returned the nameplates to all Advisory Committee members of the Bank, stating that they would have no use for the nameplates or the Advisory Committee members.

June 5, 1981: The Congress rescinds the Bank's FY 81 appropriation in light of a new FY 82 appropriation taking its place.

July 13, 1981: As part of the Omnibus Reconcilliation Act, the Senate reauthorized the Bank at $50 million for FY '82.

August 13, 1981: The Congress reauthorized the Bank at $50 million for each of the next three fiscal years.

September 9, 1981: The appropriations conference unanimously appropriated $21.85 million for FY 82 funding.

September 11, 1981: The Joint Congressional Conference Committee of the Banking Committees unanimously decides to append to the Bank's FY 82 appropriation the following command: "...direct the Secretary of HUD to expedite all Bank implementation activities by moving rapidly to publish regulations, secure an agent, staff the Bank, and disburse loans and subsidies at the earliest possible date." Conference Report No. 97-222, 97th Cong., First Session, at p. 7.

October 29, 1981: The President submits a deferral message to further delay bank's funds.

February 8, 1982: President Reagan requests a rescission of all FY 82 Bank funds. Rescission Proposal No. R-82-22, H. Doc. 97-140, at 27. Neither House of Congress took any action to rescind the Bank's funds. The rescission request failed.

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Early 1982: Secretary Pierce ignores requests from members of Congress, states, public interest organizations, and members of the Bank's Advisory Boards to begin operation of the Bank.

April 7, 1982: Five bipartisan members of Congress, the State of New York, the cities of Philadelphia and St. Paul, members of the Bank's Advisory Boards, low-income persons, a credit union, several construction firms, the Solar Lobby and several other national organizations bring suit alleging an illegal impoundment of bank funds and a failure to follow the Congressional command to "expedite" all Bank implementation activities by moving rapidly to publish regulations, secure an agent, staff the Bank, and disburse loans and subsidies at the earliest possible date.

April , 1982: The U.S. Comptroller General concluded that the President had no authority to withhold implementation of the Bank during 1982.

April 30, 1982: The Administration reversed itself and decided that it would indeed spend the Bank's funds. David Stockman released impounded funds to HUD. However HUD argues that it can take as long as it wants -- perhaps several years -- to get around to spending these funds.

July 16, 1982: Oral argument was presented on behalf of plaintiffs regarding this suit:

- The Court noted that regulations have to be in place before any money can be spent (Transcript at p. 30).
- HUD's attorneys stipulated that in 60 to 90 days the regulations could be promulgated to operate the Bank (Transcript at pp. 52-53, 55-56).
- HUD's attorney indicated that implementation of the Bank is "a matter of months, your honor, not a year or anything like that..." (Transcript at p. 61).
  Since the Bank decided not to hire an agent, but to distribute the money directly to states, HUD's attorney indicated that implementation could be even more rapid.
- HUD's attorney assures the court that it is only a matter of a couple of months until the money actually gets out (Transcript at p. 69).

June 29, 1982: The United States Federal District Court rules in favor of plaintiffs in the lawsuit. The Court specifically finds that the Bank must, consistent with the direction of Congress, spend the money as "expeditiously as possible." The Judge undertakes ongoing supervision of the implementation of the Bank and the expenditures of its funds. This guarantees that funds will be made available under the Solar and Conservation Bank.

August 29, 1982: a) The Bank requested applications from the States to spend the Bank's funds. The deadline for applications was extended until mid November, 1982.

September 2, 1982: a) At a hearing before the federal Judge to monitor the Bank's compliance, HUD admits that it has made only two policy decisions in the prior two months (Transcript at p. 39). b) HUD's Counsel assures that there has been great progress made on the regulations (Transcript at p. 43). c) HUD's attorney indicates to the Court that the Regulations will be "finished" sometime in November..." (Transcript at p. 44).

November , 1982: Forty-eight States and several territories requested in excess of $154 million of Bank funds. The Bank made notification of tentative awards of $30 million.

December , 1982: The Bank submitted draft regulations to Congressional Committees.

October 1, 1982: Congress appropriates an additional $20 million for FY 83 for the Bank, bringing the total to $41.85 million.

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The CHAIRMAN. They cite a quotation by you in an article in Renewable Energy News quoting you as saying the bank is "costly and unnecessary." I guess they might as well be upset with me because I tried to kill the Solar Bank for the same reason. So my question would be, and it's a fair question—you and I both agree on that—do you feel when you are heading an agency that you think is unnecessary and costly that you can fairly carry out the mandate of Congress and administer the program efficiently and do the best you can with the resources available?

Mr. FRANCIS. I would think, almost ironically, I would be the best person to do it, because I would want to make sure, given the responsibility to utilize these funds and to administer these funds, that they were being used in the most effective way possible. So I am trying to operate this program with the objective of getting as many of these dollars to actually achieve the energy conservation goals that we have set for ourselves. As long as Congress says it wants the program operated I will faithfully expend these funds in the manner which will be most efficient and effective.

The CHAIRMAN. As you know, there is great divergence of opinion on this issue within the Congress and it has had a very rocky life, and at one point it was killed, and resurrected, and so on. We are not particularly in a minority, those who have questions about it. Of many of those who are very much interested in solar energy, and I happen to be one of them, I suppose it rather bothers me that if you happen to be against the Solar Bank then the conclusion is that you are against solar energy.

Mr. FRANCIS. I have been accused of that. I am not against solar energy. I, however, as a novice in this area, and I confess to that, looked into the effectiveness of solar energy and all renewable energy resources. I made it a point to study it.

As you may know, the Department of HUD recently completed a demonstration program, the solar heating and cooling demonstration program, in which they spent $23 million and provided solar energy assistance to 12,000 homes. The gist of the report is that solar energy is just not technologically ready, that there are a lot of problems with it.

I believe, particularly for active solar space heating, not hot water heating necessarily, but space heating, that we might be inducing low-income people particularly and moderate-income people possibly into undertaking solar energy in their homes when they may not be able to sustain it, may not be able to afford the maintenance and the repairs that are necessary.

I received a letter from Congressman Foley recently in which he asked if we could provide some funds for a YWCA in Seattle that was just devastated by the overwhelming cost of maintaining the solar system that had been placed in their building.

So I am not sure that solar energy is ready, and I think this report indicates that. But that doesn't mean I am opposed to solar energy. I think the marketplace is the place for solar energy to make its name. I think we have provided adequate funds to stimulate it through tax credits and the solar energy demonstration program. If solar energy makes it way and is effective I am sure the consumer will use it.

The CHAIRMAN. Well, I just wanted to make a distinction in my own feelings and position as well. My opposition to the solar bank never had anything to do with opposition to solar energy. I find in my congressional experience that in too many things, totally apart from issues before this committee or anything else, that there is some philosophy among some Congressmen and Senators in both political parties that all you have to do to solve that problem is appropriate money and create an agency and that will do it. The evidence is overwhelming that this does not necessarily follow.

I felt the solar bank was unnecessary because of programs I would have preferred to spend more money on in the Department of Energy and supporting better existing programs and consolidating existing programs. We find a proliferation. We find that in the education area. We have great educational problems in this country. There are hundreds of separate educational programs. I am not against the expenditures; I would like to see it concentrated more on educational programs; I would like to see solar money concentrated more on solar energy rather than creating additional bureaucracies.

Senator Trible, do you have any questions?

Senator TRIBLE. I have no questions, Mr. Chairman. Thank you.

The CHAIRMAN. Mr. Francis, I know of no additional questions. We thank you very much for your willingness to be here today.

Mr. FRANCIS. Thank you, Mr. Chairman.

[Biographical sketch of nominee follows:]

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Francis (LAST) Richard (FIRST) Haudiomont (OTHER)

Position to which nominated: President, Solar Energy and Energy Conservation Bank

Date of nomination: Aug. 26, 1983

Date of birth: 8 (DAY) March (MONTH) 1925 (YEAR) Place of birth: Boston, MA

Marital status: Married Full name of spouse: Della May (Bailey) Francis

Name and ages of children: Mark, 32 Clare, 31 Daniel, 27

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Lynbrook HS (NY)	1938-42	Diploma	1942
US Naval Academy	1945-49	BS	1949
Yale University	1955-58	MA	1958
George Washington U	1961	--	--
University of Maryland	1967-77	Ph.D	1977

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Navy Commendation Medal w/Combat "V" (US)

Joint Services Commendation Medal (US)

Order of Naval Merit (Spain)

Pi Sigma Alpha National Honor Society in Political Science

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Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
Country Club of Fairfax	--	1981 - Present
US Naval Academy Alumni Assn.	--	1949 - Present
Woodlawn Country Club	Sec. Stock Bd.	1967 - 1981
Amer. Embassy Personnel Assn.	President	1963 - 1966
Mt. Vernon Civic Assn.	--	1967 - 1973
Cub Scouts of Amer. Personnel	Commissioner	1965 - 1966
Shadow Walk Homes Assn.	Secretary	1973 - 1983

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

U.S. Marine Corps		1949-1969
Vice President Washington College	Chestertown, MD, College Adm.	1970-1971
Executive Director MD Indep C & U Assn.	West St., Annapolis, MD, Prof. Assn.	1971-1974
Assoc. Dir, Fed Rels Assn. of Am Colleges	1818 R St., N.W. Wash. D.C., Prof. Assn.	1974-1976
Dir, Gov't Rels Nat'l Assn. Indp. C&U	1717 Mass. Ave., N.W. Wash. D.C., Prof. Assn.	1976-1978
Ex. Vice Pres. Nat'l Multi Housing	1800 M St., N.W. Wash. D.C., Trade Assn.	1978-1981
Special Asst Dept. of HUD, PD&R	451 7th St., S.W. Wash. D.C., Government	1981-1982
Manager Solar Dept. of HUD, Bank,	451 7th St., S.W. Wash. D.C., Government	1982-1983

NB: Colleges and Universities = C&U

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Government experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

US Marine Corps	1943-1945
US Naval Academy	1945-1949
US Marine Corps	1949-1969
US Marine Corps	1970
Department of Housing & Urban Development	1981-Present

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

"Marine Professor", Marine Corps Gazette,	1960

Political affiliations and activities: List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Precinct Captain,	Woodlawn (Woodley) Precinct, Fairfax County, Virginia	1969-70
Linwood Holton Campaign,	for Virginia Governor - phone bank, canvassing	1969-70
Warren Barry Campaign,	for Delegate - coffees, phone bank, & canvassing	1969-70
Jim Tate Campaign,	for Congress - phone calls & literature drops	1974
Jim Tate Campaign for State Senator - phone calls & literature drops		1978

Jack Herrity Campaign for Chairman of Fairfax County Board of Supervisors - phone calls and literature drops 1979

Housing Task Force - Carroll Campbell, Chairman - Reagan for President Campaign 1980

Housing Committee - Carla Hills, Chairman - Reagan Transition 1980

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Political contributions: Itemize all political contributions of $500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

Rick Fore Exploratory Committee - Nevada U.S. Senatorial

Primary - 1982 -- $2,000.00

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet)

I have been serving as Chief Operating Officer, first as Comptroller and later as Manager, of the Solar Bank since its reestablishment in June 1982. (See continuation sheet for further qualifications.)

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

N/A

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

NO

3. Has anybody made you a commitment to a job after you leave government?

NO

4. Do you expect to serve the full term for which you have been appointed?

YES

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Continuation Sheet

Qualifications for the Presidency of the Solar Bank

I have served as chief operating officer of the Bank since its reestablishment in the Department last year, first as Comptroller, then as Manager. I have actively engaged in all activities related to expediting start-up activities from providing discussion materials at Board meetings establishing Bank policy to testifying before the Congress, while running the day-to-day operations of the Bank. A list of accomplishments achieved during my tenure as Comptroller and Manager of the Bank is attached.

Prior to serving the Secretary of HUD in my present capacity, I served as Senior Policy Advisor to the Assistant Secretary for Policy, Development and Research. Again, my responsibilities entailed the development and implementation of new policies, programs and projects on housing matters of national impact. In my prior positions, I have had direct contact with members of Congress, Congressional staff members, the media and the general public.

In my career in the military, higher education and housing areas, I have been responsible for managing within the scope of both large and small organizations and effecting policy changes. This has included putting three organizations into operation from their inception, twice as Chief Operating Officer. I have a technical background, gained during my studies in engineering at the U.S. Naval Academy. In addition, during my military career, I was directly involved in research and development both in the areas of equipment and policy development.

I have set-up a smooth functioning organization in the Department in one year in a manner which will attain the most effective use of public funds.

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Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction (other than tax-paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None

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4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

Associate Director, Federal Relations, Association of American Colleges (Higher Education Issues)

Director, Government Relations, National Association of Independent Colleges and Universities (Higher Education Issues)

Executive Vice President, National Multi Housing Council (Housing Issues)

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

N/A

Civil, criminal and investigatory actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

None

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None

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The CHAIRMAN. Next, I would like to invite Mr. Ralph L. Stanley, nominee for Administrator of the Urban Mass Transportation Administration.

Before I ask you any questions, I would like to ask unanimous consent that the statement of Senator Hawkins supporting Mr. Stanley's nomination be placed in the record.

STATEMENT OF SENATOR HAWKINS

Senator HAWKINS. Ralph, I am very pleased to know that you are about to become the next Administrator of the Urban Mass Transportation Administration. I know personally of your outstanding record at the Department of Transportation, and expect that your high level of performance will continue. I am very much looking forward to working with you in the coming months on mass transit issues. There are a few concerns of mine that I would like you to consider as you begin your service at the Urban Mass Transportation Administration.

Last year, a congressional compromise reached during consideration of the 1982 Surface Transportation Act reduced the funds available for transit operating assistance for the period of 1983–1986 to less than $1 billion. Congress rejected further reductions in operating assistance levels. Further reductions in operating assistance levels would start to put pressure on the Section 3 Discretionary part of the Federal transit assistance program. Considering the number of "new start" rail projects in the planning stages in Florida, I am hopeful that UMTA policies will, in the future, take into account the importance of maintaining a healthy Section 3 Discretionary program.

A few of the Florida rail projects that I have mentioned are interested in receiving consideration under the "Fair Share for Cost Effective Projects" provision of the Surface Transportation Act. I am looking forward to publication by UMTA of the various factors that will be considered in funding these projects. This information should also probably be made available to new transit project planning groups that have formally informed UMTA of their interest in applying for Federal transit assistance.

Mass transit certainly will have a bright future in Florida as we move toward becoming the 4th largest State in the union and try to reconcile our remarkable growth with quality of life and environmental considerations. Many other Sunbelt States are facing the same urban growth and transit needs.

Once again, Ralph, I look forward to working with you on all transit issues.

The CHAIRMAN. Mr. Stanley, before you get all settled I will swear you in.

[Witness sworn.]

The CHAIRMAN. Do you have an opening statement you wish to make?

Senator TRIBLE. Mr. Chairman, before Mr. Stanley begins, I wonder if I may make a comment.

The CHAIRMAN. Another Virginian?

Senator TRIBLE. Another Virginian.

The CHAIRMAN. I yield to the distinguished Senator from Virginia.

Senator TRIBLE. The South may rise again, Mr. Chairman.

The CHAIRMAN. Not until after the West. [Laughter.]

Senator TRIBLE. I am pleased to welcome yet another Virginian, Mr. Chairman, Ralph Stanley, here today as the nominee for Administrator, Urban Mass Transportation Administration. I reviewed Mr. Stanley's qualifications and I believe he will make an able administrator.

Of course, I will be delighted to have someone with a Virginia perspective in this important post. He has my support and I hope the committee will act to report his nomination favorably and expeditiously, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Trible.

Mr. Stanley, would you like to proceed.

Mr. STANLEY. Thank you.

[The complete statement follows:]

STATEMENT OF

RALPH L. STANLEY

NOMINEE FOR ADMINISTRATOR OF THE

URBAN MASS TRANSPORTATION ADMINISTRATION

BEFORE THE UNITED STATES SENATE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

NOVEMBER 10, 1983

Mr. Chairman, Members of the Committee, I am honored to appear before you today as the President's nominee to be Administrator of the Urban Mass Transportation Administration (UMTA). I am grateful to both the President and Secretary Elizabeth Dole for the confidence they have shown in me by recommending me for this position.

Although relatively new to UMTA, I am not a stranger to transit. I feel particularly fortunate to have had the opportunity to work directly for two of the finest Secretaries of Transportation to ever serve the Department, Drew Lewis and Elizabeth Dole. I believe this experience has provided me with a base of knowledge on the workings of government and the administration of public policy. Secretary Lewis' unparalleled leadership in achieving passage of the Surface Transportation Assistance Act of 1982 and Secretary Dole's superb implementation of its major provisions in the past seven months have provided the best possible training for me in preparation for this position.

Specifically, I have served in the Department of Transportation in several capacities since 1981, first as Special Assistant for Policy to the Secretary under both former Secretary Lewis and Secretary Dole, and then as Chief of Staff to Secretary Dole. In my role as Special Assistant to former Secretary Lewis, I coordinated a number of major policy initiatives related to UMTA.

By far the most important of these was the Surface Transportation Assistance Act of 1982. The experience of participating in many of the deliberations over the STAA with the Administration, Congress, and interest groups afforded me an excellent opportunity to become familiar with the UMTA staff, program, and constituent groups. I believe this familiarity with the staff and program will serve me in good stead if I am confirmed as Administrator. I also value my experience of working with the members of Congress and particularly members of this Committee. I look forward to working with you again, if I am confirmed by the Senate.

This Administration has worked diligently with you to enact and implement this legislation because we recognize the important role that transit plays in providing the mobility necessary for a vital economy and we are committed to strengthening mass transit. The transit legislation which passed in large measure thanks to the able leadership of the members of this Committee and the Public Works Committee will provide a dedicated source of revenue to support

crucial capital needs. If confirmed as Administrator of UMTA, I will be honored to work with Secretary Dole in her efforts to make public transportation environmentally responsible, safe, efficient, and cost effective.

Since being selected as Administrator-designate, I have had the opportunity to visit with several interest groups that are concerned about urban mobility, such as APTA, transit labor leaders, AASHTO, the Conference of Mayors, the Conference of Black Mayors, elderly and handicapped representatives, and the International Taxicab Association. These meetings have resulted in frank and productive discussions. I am looking forward to building on these relationships in the months ahead and maintaining a continuing dialogue with all groups that have an interest in the future of public transportation.

I would like to take a moment to highlight several other areas I will emphasize if confirmed. Regarding our formula program, I will continue UMTA's efforts to transfer control over decisions regarding the use of capital funds to State and local governments and to streamline the grant program through the administration of the new Section 9 formula program. At this point I would like to acknowledge the fine work of the entire UMTA staff in both developing and implementing this program. Progress with regard to Section 9 has been excellent. UMTA apportioned the entire $779 million authorized under

Section 9A during fiscal year 1983. On November 2, 1983, UMTA published the apportionment of the fiscal year 1984 Section 9 funds. We are pleased to have this information available to our grantees so early in the fiscal year.

Another area of emphasis is minority participation in transit. I will be particularly interested in assuring that the 10 per cent statutory requirement of UMTA's Section 105(f) program is transformed into the reality of maximum contracting opportunities for disadvantaged business enterprises. In addition, I will strongly support Secretary Dole's special emphasis program to increase all forms of opportunity for women and minorities in transit within both UMTA and the transit industry.

Finally, I will continue the Administration's efforts to increase the participation of the private sector in the development of mass transit projects and in the provision of transportation services. I believe one of the most challenging and exciting issues facing UMTA in the coming months is the opportunity to tap the resources and creativity of the private sector in the development and improvement of our public transportation systems.

Mr. Chairman, thank you once again for the opportunity to appear before the Committee. I will be glad to answer any questions you may have.

The CHAIRMAN. Thank you, Mr. Stanley.

I understand that in order to avoid any conflict of interest, you will disqualify yourself from participation in any particular matter concerning the extension of the Washington Metropolitan Area Transit Authority's metrorail service into Alexandria or Braddock Road or Huntington metrorail stations which are near to certain real estate properties in which you hold an ownership interest. Is that correct?

Mr. STANLEY. Yes, sir.

The CHAIRMAN. What you are saying is you will avoid even the appearance of conflict of interest in your service as Administrator of UMTA if you are confirmed?

Mr. STANLEY. Yes, sir.

The CHAIRMAN. Do you agree to appear before this and all other duly constituted committees of Congress when requested to do so?

Mr. STANLEY. Yes, sir.

The CHAIRMAN. Mr. Stanley, I have a statement by Senator Mack Mattingly supporting your nomination, which I will place in the record because he was unable to be here.

STATEMENT BY SENATOR MATTINGLY

Senator MATTINGLY. Mr. Chairman, I am very pleased to support the nomination of Ralph Stanley as Administrator of the Urban Mass Transportation Authority [UMTA]. I consider Ralph Stanley to be extremely knowledgeable about transportation issues. He has ably served us in the U.S. Department of Transportation, and I am confident that he will perform his duties as the UMTA Administrator in an equally able manner.

Georgia and the city of Atlanta are very proud to operate one of the finest rapid rail systems in the country. The Metropolitan Atlanta Rapid Transit Authority [MARTA] is an outstanding example of local commitment to a project. It is probably the most cost-effective and efficient system in the United States today.

The CHAIRMAN. My first two questions will be two that he asked me to ask of you.

Atlanta has operated a rapid rail system for more than 4 years. It still is classified as a new start system. What is your position for funding new start rapid rail systems such as Atlanta?

Mr. STANLEY. Our 1984 Appropriations Act provides us with guidance as to the funding of new start systems. That act gives us several criteria by which to evaluate competing systems interested in further funding.

With regard to Atlanta, I believe they have some $90 million earmarked in that act for this fiscal year.

I think we have to be very careful prior to making a major Federal capital investment in new start systems.

The administration has indicated its support for funding those systems. Atlanta, which currently has a letter of intent request pending at the Department, will receive full review as to further funding of the Atlanta system.

The CHAIRMAN. Atlanta has requested a multiyear funding commitment from UMTA in the form of a letter of intent. What is

your position regarding such multiyear commitments? Not just for Atlanta, but multiyear commitments in general.

Mr. STANLEY. I think the letter of intent process that UMTA has carried out in years past serves as a real basis for local authorities to feel that there will be some predictable, stable, and certain level of funding in the outyears.

However, again I would caution UMTA currently has approximately $200 million in commitments pursuant to previous letters of intent. With regard to Atlanta and other cities and areas seeking future letters of intent, we have to make sure that this is done in as prudent a fashion as possible and that we don't commit the Federal resources in outyears to projects with expenses that will exceed the resources available.

The CHAIRMAN. Also Senator Tower was not able to be here today but requested that I ask a question for him. On November 1, 1983, during the House consideration of H.R. 3103, Congressmen Anderson, Snyder, and Shuster stated that it was their intention and that of the committee to urge Secretary Dole to issue a letter of intent to fund the Los Angeles metrorail project which would cover those years for which section 3 money had been authorized. Do you believe such a precedent is appropriate? What is your view regarding the adequacy of new start money for the growing number of projects?

Mr. STANLEY. With regard first to the adequacy of funds available for new start projects, our appropriations bill indicates that for the fiscal year 1984 approximately $399.5 million is earmarked specifically for those projects. The revenue estimates from the pending gas tax that was passed last December indicated that we could expect to see revenues slightly in excess of $1 billion a year for fiscal years 1984 through 1988. The demands on that trust fund far exceed the resources available both in terms of new start projects and the extent to which we are already committed out of that fund to provide rail modernization funds, to assist in the purchase of buses and construction of bus facilities.

So while we were supportive of prudent management with regard to new start projects, it would be premature for me to take a position or make a commitment with regard to any of the individual projects.

Los Angeles currently has not submitted a request for a letter of intent for any of the operable segments. I understand there has been encouragement received from the House in supporting that effort. We have received their preliminary final environmental impact statement just on October 28, and that is being reviewed both in UMTA and the Office of the Secretary. That step is precedent to receiving any request they have for a letter of intent.

The CHAIRMAN. Regarding Federal operating subsidies, there has been a great deal of discussion over the merits of operating subsidies from OMB and others. Included in the others is me. And my colleague, Senator D'Amato, certainly has been very active on this issue. That is an understatement.

If a city transit system, especially a rural transit system, is going to be asked to reduce its dependence on Federal operating subsidies, how would you propose to provide incentives to these cities to

reduce this dependency and yet maintain quality service to their community?

Mr. STANLEY. I think the overall question of operating assistance is one that has been an issue since the inception of Federal involvement in the programs. In the few weeks I have been at UMTA I have had the opportunity to read the history of the legislation.

I think even with the breakthrough in the mid-1970's, when the Federal Government first began to provide operating subsidies, some of the most vocal proponents, including former Senator Harrison Williams, indicated that their one concern was that operating assistance might serve to reward inefficiency at the local level.

In an era when Federal budget deficits are projected to be in excess of $200 billion, our budget at UMTA, the budget at the Department of Transportation, the budget at all Cabinet and executive level agencies are going to come under continued scrutiny.

I think the best way to attempt to provide incentives for areas that are dependent on Federal operating assistance is to take a hard look at what certain other local areas have done.

I have been encouraged since this administration reinitiated an examination of the policy of providing operating assistance at the degree to which local communities have responded. They have made great strides in the past 3 years toward phasing down operating assistance.

I think that has precipitated local communities and State governments to reassess exactly what level of service is being provided, what is operating assistance, and what is capital assistance. It has promoted management efficiencies, labor productivity, and questions that may not have been examined with that level of scrutiny throughout the 1970's when operating assistance was first introduced.

The CHAIRMAN. Well, I have trouble with operating assistance to begin with. As a former mayor I thought I would see what would happen. Unfortunately too many times it did. When negotiations came up with the unions and so on it was, "Well, we've got the Federal operating subsidies; don't cause any problems; just deal with whatever they want." I saw too many instances where the efficiency did go down because of the old idea, "Well, those are Federal dollars," that somehow they are free, and they weren't treated the same as the local taxpayers' dollars.

I understand the problem; I understand the difficulties, particularly after people have been hooked on operating subsidies. I think it was a very bad precedent to start at the outset. Unfortunately, in too many communities my initial feelings have been proven true. I wish I had been wrong.

Senator Lautenberg.

Senator LAUTENBERG. Thank you, Mr. Chairman.

Welcome, Mr. Stanley, to the committee. I take pleasure in welcoming you, because in case everybody didn't know it, you're a native of New Jersey and received your college education at Princeton. I don't think they have a major mass transit need down there, but certainly we don't want to leave them out.

I am sure that I don't have to take the time to explain to you how important mass transit is to the State of New Jersey.

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The fiscal 1984 mass transit funding is about $400 million below the amounts authorized last December. The Surface Transportation Assistance Act was supposed to balance needs for highways, bridges, and mass transit. With the cuts in 1984 the deal doesn't look as good as it did last December.

In New Jersey operating assistance—I hate to disagree with my chairman here—is critical, and the administration's original budget recommendations on operating assistance would have meant fare increases in New Jersey well beyond the fairly sharp increases we had last September.

Because of my strong interest in DOT's mass transit program I will focus my questions on those issues.

Last December you were intimately involved in the passage of the Surface Transportation Assistance Act. At that time Secretary Lewis strongly opposed operating assistance for mass transit. Secretary Dole has indicated that the administration is no longer trying to kill operating aid. Do you support the appropriations for UMTA up to the authorized amounts approved in the STAA by the Congress?

Mr. STANLEY. Senator, we are now currently in deliberations with the Office of Management and Budget with regard to exactly what level of assistance we will provide to transit systems as a whole and operating assistance in particular.

As you know, 2 weeks ago the President met with the Cabinet and sent each of the executive branch agencies back to the drawing board. I think it would be premature for me to comment on what will be the final outcome in the fiscal 1985 budget. However, I can assure you that both from my standpoint and Secretary Dole's participation in the ongoing budget deliberations we have gone to great lengths to alert OMB as to what occurred in the winter of 1982 and the significant steps made so far in terms of phasing down operating assistance, particularly the interest in Congress, both the House and the Senate, in maintaining operating assistance at levels deemed to be necessary for the maintenance of those systems.

Senator LAUTENBERG. I would hope that we can encourage your advocacy for mass transit in the battles with OMB and the White House.

I have great respect for what Senator Garn said about having the appearance that this is a replenishable well and it ought not to be. We want to operate it as efficiently as we can, but we do need help in those areas. Our State is very heavily a commuting State; the jobs never seem to be quite where people live and vice versa.

On August 8 of this year a suspended cement plaster ceiling at the transportation center in Jersey City, N.J., collapsed. An interim report commissioned by the Port Authority of New York and New Jersey found the primary cause to be lack of attention to appropriate standards in the design and construction phase of the ceiling. What has been UMTA's role in the investigation of the cause of this accident?

Mr. STANLEY. On August 8 the accident occurred. At Secretary Dole's direction, on August 30, 1983, a team was sent up from UMTA headed by our regional administrator who met with port authority officials and reviewed with them what steps they were

going to take in terms of investigating the accident, deemed that those steps which led to the interim report—and I think there is a final report due in the very near future—would be adequate. And we are monitoring that situation closely.

As a result of that accident I have asked my staff to undertake a full policy review of UMTA's role in safety and ongoing efforts to monitor those kinds of safety concerns.

Senator LAUTENBERG. Do you think that facilities constructed with Federal funds ought to be subject to Federal standards? What role would UMTA play in terms of defining minimums for the safety of these facilities? Do you see a role there at all? The port authority of the two States, New Jersey and New York, are considering establishing standards there by which the port authority would have to abide. Do you see UMTA getting into that scheme as well?

Mr. STANLEY. At the present time I think there is a balance to be struck with the role that UMTA can play in terms of continuing oversight of the facilities where we do have considerable Federal investment and the resources we have available. I am convinced that currently we have the adequate statutory authority to review those kinds of incidents. But I would proceed very cautiously in trying to replicate the major engineering oversight role that the Federal Highway Administration currently has due to the ability on highway projects to have standardized engineering. The major transit properties and major projects vary from city to city, but this issue is one that I think bears very close scrutiny as a result of what occured in August.

Senator LAUTENBERG. We discussed this yesterday briefly. For the record, I want to encourage UMTA to take a very close look at this. We don't want to have redundant facilities operating all over the place, but by the same token we have the public safety as a responsibility. I think there ought to be some kind of a minimum standard by which we proceed to make sure that everybody is protected.

There was a lot of discussion last December about project starts. The chairman asked about it earlier. As an advocate for mass transit I recognize the need for these. My concern is that we don't lose sight of the task facing us in modernizing older systems. Do we have the resources to address both new starts and modernization on a timely basis?

Mr. STANLEY. At the current time UMTA is engaged in two major studies. One is to come up with a figure on what it would take to modernize the Nation's existing older city rail systems; another, as a result of the discussion that occurred at last year's STAA, is to come up with a report to Congress in which we can adequately quantify transit needs on a nationwide basis.

I think we have a primary commitment to those cities in which there already is a substantial Federal investment.

Since UMTA began we have invested over $20 billion in capital facilities. We will for this fiscal year probably provide up to $900 million in rail modernization to those older cities to insure that that capital investment is preserved and that we don't stretch very limited Federal resources too far in investing in multibillion dollar

new start systems such that we can't really adequately provide service to either.

It would be disingenuous to say that there are not far more needs than there are Federal resources currently available. I think the best thing that the Federal Government can do at this point is to be candid about the extent of support we can provide. As I said, the priority would be to preserve the capital investment in the rail systems that we have had a long history in supporting.

Senator LAUTENBERG. Does modernization of equipment come under the capital cost heading? Or is that considered operating?

Mr. STANLEY. Major rehabilitation of existing capital equipment is a capital expense. By statute, if a grantee indicates that they wish to rehabilitate that equipment, we will fund as a capital expense anything that is in excess of 1 percent of the overall cost of that unit. What we do not fund as a capital expense is routine maintenance. The distinction between routine maintenance and regular parts replacement and general rehabilitation is where we draw the line.

Senator LAUTENBERG. Members of Congress have expressed serious concerns about the way the guidelines governing section 13(c) were developed. Do you agree that these rules should have the participation and consultation of labor, management, and congressional committees with transit responsibility?

Mr. STANLEY. Yes. Since we first came into office, the Reagan administration has had a task force involving both the Department of Labor and the Department of Transportation which has reviewed the administration of section 13(c). There are no present plans to issue in the near future any revised or proposed guidelines, and any such effort, I can assure you, will be taken in full consultation with the Congress, with labor, and with all the affected parties.

Senator LAUTENBERG. Thank you, Mr. Stanley. My time is up.

Thank you, Mr. Chairman.

I wish you good luck.

The CHAIRMAN. Senator D'Amato.

Senator D'AMATO. Thank you, Mr. Chairman.

I have an opening statement that I ask be received into the record as if I read it in its entirety.

The CHAIRMAN. It will be included.

OPENING STATEMENT OF SENATOR D'AMATO

Senator D'AMATO. Mr. Chairman, I would like to welcome Mr. Ralph Stanley, nominee for the position of UMTA Administrator, to this committee as we conduct these important confirmation hearings. I thank the chairman for calling these hearings and I look forward to hearing Mr. Stanley's remarks.

We are rapidly approaching the 20th anniversary of Federal activity in the area of mass transportation. Enactment of the Urban Mass Transportation Act of 1964 represented a long overdue recognition that the Federal Government has a vital role to play in promoting and assisting mass transportation. As a result of this landmark legislation, an important Federal/State/local partnership has emerged during the last two decades, a partnership which has

greatly benefited all those affected by the 1,055 transit systems throughout this Nation.

Of course, I am referring to the millions upon millions of workers who use the Nation's bus, subway, and commuter rail lines to get to and from work. However, I am also speaking of the Nations businesses, both large and small, who are prime beneficiaries of a sound national mass transit policy.

Mr. Chairman, the transit industry itself employs hundreds of thousands of persons. I know that Mr. Stanley personally witnessed the magnitude of the industry and its economic spinoffs when he recently attended a conference in Denver, sponsored by the American Public Transit Association.

Every $100 million in transit capital investment translates into 3,200 direct full-time equivalent jobs. Similarly, each $100 million in operating expenditures supports over 3,000 full-time equivalent jobs.

Mass transit is an essential component in this Nation's fuel conservation program. In 1980, mass transit saved this country 39.4 million barrels of petroleum fuel. In addition, if all mass transit trips over the past 10 years had been made by automobile, America's cities would have been polluted by an additional 138,000 tons of hydrocarbons, 1.36 million tons of carbon monoxide, and 46,000 tons of particulate matter.

Finally, Mr. Chairman, public mass transit is a community service which responds in crises. Residents in the Utah Transit Authority's operating district in Salt Lake, Davis, and Weber Counties have found the area's public transit system crucial to their mobility during Utah's disastrous spring flooding. I commend the transit managers in your State, Mr. Chairman, for their dedication to see to it that the public is provided dependable transit service—particularly during a community crisis.

Mr. Chairman, not since 1974, when operating assistance at the Federal level began, has the Federal mass transit assistance program been so dramatically and positively changed. The mass transit provision of the Surface Transportation Assistance Act of 1982 represented the culmination of years of effort to make Federal mass transit aid more predictable and efficient.

The 1 cent increase in the gas tax dedicated to mass transit capital projects will make a significant contribution toward reversing a decline in transit infrastructure and will help modernize rapidly aging rolling stock. The section 9 formula block grant program will, for the first time in the history of Federal mass transit assistance, assure allocation of funds, both capital and operating, on the basis of predictable, service-related factors. Most importantly, operating assistance, while reduced over fiscal year 1982 levels, has been retained and the process for the distribution of funds has been streamlined so as to alleviate the paperwork burden on transit operators.

Mr. Chairman, the new Surface Transportation Assistance Act authorizes over $4 billion for mass transit each year through 1986. The job of administering such a massive program is a challenging one which requires both an able administrator and a management team who appreciate the unique contribution mass transit makes to the economic vitality of this Nation.

Again, I am pleased at this opportunity to have Mr. Stanley before this committee. As a member of the committee which authorizes Federal mass transit assistance, as well as the Senate Transportation Appropriations Subcommittee, I look forward to working with him. He has served ably as chief of staff to Secretary Dole and I fully expect that he will serve with equal distinction as UMTA Administrator, once confirmed.

Senator D'AMATO. Mr. Chairman, I have previously had the opportunity to speak with Ralph Stanley, the nominee for the position of UMTA Administrator. I have indicated to Mr. Stanley that I consider the position of Administrator to be of critical importance to mass transit and particularly important to our metropolitan regions—New York, New Jersey, Connecticut, and Pennsylvania.

I am quite concerned, as the chairman has indicated, with the administration's policy regarding operating assistance.

Mr. Stanley, Senator Lautenberg touched on this issue for a moment with you concerning your view of the role of operating assistance in the formation of Federal mass transit policy as it relates to our local areas. Are you going to be a proponent of operating assistance or are you going to adhere to the dictates of OMB which seeks to eliminate this program?

Mr. STANLEY. I think in terms of operating assistance for transit systems as a whole a transit system should not and cannot be expected to meet its operating costs from just fare revenues. The question then becomes, given the fact that those transit systems need operating assistance, what is the appropriate level for it to be provided, the local level, the State level, or the Federal level. I have in my brief time at UMTA and in the course of budget deliberations in the past made clear to the Office of Management and Budget just how dependent certain of those systems are on what we deem to be operating assistance.

I believe it is essential, but I also wouldn't be candid if I didn't indicate that there is pressure again in this budget cycle on our department as a whole with regard to overall levels of Federal spending. I think we are in an era of limitation in that regard and those hard choices have got to be made, not just with regard to the budget of UMTA, or FAA, or the Coast Guard, or the Department of Transportation, but the overall Federal resources.

Senator D'AMATO. Let's look at the record: Operating assistance for fiscal year 1982. Do you know what the total dollar amount of operating assistance was for 1982?

Mr. STANLEY. I believe from the Federal level we provided approximately $1.1 billion.

Senator D'AMATO. As related to fiscal year 1983?

Mr. STANLEY. In fiscal year 1983 our operating assistance, I believe, totaled $875 million.

Senator D'AMATO. Was that an increase or a decrease?

Mr. STANLEY. It's a decrease.

Senator D'AMATO. How much of a decrease?

Mr. STANLEY. A decrease of approximately $250 million.

Senator D'AMATO. Therefore, as a result of legislative compromise, operating assistance has been reduced by about a quarter of a billion dollars. Is that correct?

Mr. STANLEY. Yes; it is, Senator.

Senator D'AMATO. Proportionately, can you show me other areas in transportation that have experienced that kind of reduction?

Mr. STANLEY. Within the context of our Department's budget one thing that first comes to mind is the budget pressures we felt in the Maritime Administration. Originally in 1980, before we took office, there was some $200 million proposed for construction differential subsidies for our Nation's shipyards which also are in very, very dire straits. Those shipyards have not received any construction subsidies.

Senator D'AMATO. In fiscal year 1984, at what level do you contemplate operating assistance will be?

Mr. STANLEY. In fiscal year 1984 that operating assistance should be at a level of approximately $875 million.

Senator D'AMATO. Are you committed to fight for an appropriation at those levels in 1985?

Mr. STANLEY. I am committed, with regard to deliberations currently underway with OMB and the White House, to remind them of the gains that were made last December, remind them of what I consider to be the very significant sacrifices that have been made by cities that do receive operating assistance, and also to point out that such a phase-down in operating assistance is something that has got to be done in a rational and orderly manner and not one that disrupts the planning of the cities.

Senator D'AMATO. Very good.

In relationship to the frequently used argument that operating assistance encourages waste, do you really subscribe to that school of thought?

Mr. STANLEY. I wouldn't say there is no direct empirical evidence that operating assistance encourages waste. I have had the opportunity in the last few weeks to review a lot of history of operating assistance.

Senator D'AMATO. Weren't those rather old studies? I am referring to the studies which indicated an escalation in wages during the 1960's and early 1970's. Hasn't that really turned around quite a bit?

Mr. STANLEY. I think the studies I have referred to, one most recently from the Kennedy School of Government, examined in a very empirical way under a concept known as leakage just where that operating assistance dollar went. According to that study one of the results was that there was a considerable increase in labor costs over the rate of inflation for that time. My concern is that operating assistance should show increases in ridership, increases in productivity, increases in usage, increases in energy saving, and when committing Federal resources of that magnitude I think it is incumbent on us in an ongoing fashion to examine just what we are buying for that dollar.

I don't think the studies have been conclusive one way or the other, but those I am familiar with have raised those kinds of questions as to just what that operating assistance dollar has gotten us.

Senator D'AMATO. Since the inception of Federal operating assistance, do you know whether or not the cost per passenger has increased or decreased?

Mr. STANLEY. The cost per passenger?

Senator D'AMATO. Yes.

Mr. STANLEY. No, sir, I don't.

Senator D'AMATO. Suppose I told you that the cost per passenger dropped 3 percent?

In addition, what is your opinion regarding the reduction of COLA's in most labor agreements?

Mr. STANLEY. I think that is a very encouraging sign.

Senator D'AMATO. What percentage of Federal Government contributions constitute operating assistance?

Mr. STANLEY. Overall it is my understanding the total Federal operating assistance nationwide is approximately 13 percent. It varies very significantly from property to property. In New York I believe it is in the magnitude of 6 percent for the New York City system, and then there are some of the smaller cities where the contribution is much more significant.

Senator D'AMATO. In 1981, State and local governments accounted for some 40 percent of local operating revenues. Since 1981, the State and local share has increased. In 1981, the Federal Government contributed some 17 percent. As you have indicated, the Federal share has decreased. The fact is that a $250 million Federal cut was made in operating assistance.

I think it is absurd for people to use operating assistance as a whipping boy for the problems faced by mass transit systems and to act as though the Nation's budget could be balanced by eliminating this one element. Indeed, we have seen a rather concerted effort to attack this aspect of Federal assistance. I suggest that if all other areas of Government were treated in a similar manner; that is, subjected to a 20-percent reduction in available funds over a 3-year period, we wouldn't have any budget problem.

What I propose is not to increase operating assistance but rather that we work toward reducing it in an intelligent and thoughtful manner. Let me say that I am very encouraged by Mr. Stanley's approach. We have already provided a 3-year mechanism to absorb a 20-percent cut, as well as to address other concerns.

I think at this point, after we have worked and fought to provide funding sources for mass transit, that we must carefully evaluate proposed changes in the program. We increased the gasoline tax with the specific idea that 1 cent would be set aside for mass transit and a portion of that fund would be set aside for operating assistance. We would do great violence, particularly regarding the older and smaller systems, if operating assistance was suddenly eliminated from this carefully crafted program. Many people sacrificed different interests in order to reach an accommodation that best addressed the needs of all: It was a good deal. I might note that the chairman himself made a significant contribution to bringing about this package.

The CHAIRMAN. You beat me over the head with a stick.

Senator D'AMATO. I think in the final analysis the chairman did. [Laughter.]

Included in the Surface Transportation Assistance Act is an excellent provision which permits a transit property to exchange $3 in capital for every $2 of operating assistance. I know you are aware of this provision. I understand some fairly large properties are exercising the 3 for 2 "swap" option. Unfortunately, some are then going back and asking for section 3 discretionary funds to

make up for what they have given up in capital. What is your opinion of this?

Mr. STANLEY. I share the concern about that. We to date, have pointed out the experience of that program. We allowed a trade-in of section 5 tier 4 funds. That provision extends to the end of the year. To date 68 properties have exercised a trade-in of approximately $27 million; 7 of those 68 have gotten section 3 assistance.

We looked at each of those cases, and to date we are fairly sure that those were projects that were either earmarked in prior sessions of Congress—prior legislation—or were projects that we had approved previously.

There is not yet a pattern of trading in for operating assistance with expectations for new section 3. That is one to watch very closely, because I know there is an interest in continuing that provision.

Senator D'AMATO. Do you support an extension of the swap provisions?

Mr. STANLEY. At the present time I am supporting the expiration of that. I think we are going to have to take a careful examination of how that worked once it is fully completed. I will be glad to examine that, because I know there is a great deal of interest in the transit community to extend it.

Senator D'AMATO. Let me suggest to you that one of the concerns that many of us have in the area of operating assistance is to make certain that proper maintenance of rolling stock and fixed facilities is able to be carried out. It is one thing to enable transit properties to purchase capital stock and equipment and make renovations, but it is quite another matter to assure the performance of adequate maintenance work. With respect to these items the Federal Government has a definite responsibility to protect the investment it has made in capital stock, equipment, and facilities.

What is your view of the duty to insure proper maintenance and the need to expand the concept of what items constitute maintenance? I think there are some interesting possibilities in treating some maintenance expenses as capital costs. Is that feasible? Is it something we should explore?

Mr. STANLEY. I think I would be very willing to take a very hard look at what we, at UMTA, call capital and what we call operating. The biggest mistake I think the Federal Government can make—and I indicated earlier my major concern is return on investment—is to create a system where there are absolute and positive incentives for some of our grantees to go out and purchase new capital equipment that costs far in excess of what it would to maintain existing equipment. I believe there is a tremendous argument that can be made, consistent with our concerns about fiscal responsibility and holding down outyear costs, for the examination of the division between capital and operating and placing more emphasis on maintenance and rehabilitation.

Senator D'AMATO. Therefore, may I rely on your willingness to make it one of your priorities, during the forthcoming legislative session, to advance the theory that certain items of operating assistance or operating programs may properly be redefined as capital or maintenance expenditures?

Mr. STANLEY. I would be very willing to make it a top priority to look into just where the distinguishing line we currently draw is and how that could be reexamined in a way that would result in better management and better fiscal responsibility on behalf of the Federal Government.

Senator D'AMATO. There was a certain amount of debate during consideration of the Transportation Appropriation Act for 1984 as to how section 3 funds should be allocated among the categories of rail modernization, bus, and new starts. Do you have any thoughts on funding priorities within section 3? And, how would current UMTA funding commitments affect your proposals?

Mr. STANLEY. With regard to section 3 funding, currently we have some specific items in our appropriations bill as to how that would be allocated. As I indicated earlier, approximately $399 million has been earmarked for new starts and major capital investments and another $545 million for rail modernization, and I think approximately $190 million for maintenance of bus facilities, bus-related activities.

Currently at UMTA we are developing a program for fiscal year 1984 in concurrence with those guidelines, and I think one of the greatest services, when we return to the new start provision of that act, that we, in the executive branch can provide both to Congress and to the industry is to develop a policy. There are criteria in that act on cost effectiveness, the degree of local support, degree of local political support, and stability of local financing.

Again, with regard to new starts, we can provide in the very near future that kind of policy statement to assist both the Congress and the administration in evaluating the propriety of those major new capital investments.

With regard to the rail modernization, I think our first priority would be those projects for which we receive direction from Congress already, and for those, of course, the administration has a major commitment.

Senator D'AMATO. Senator Lautenberg previously mentioned the problem of an eventual head-on clash between those activities that simply can't be funded in terms of rehabilitation in the so-called new starts. I have been an active proponent of making funds available for new starts. However, I think that we have to see to it that the allocation of funds is not such that it becomes impossible to do the kind of maintenance and capital improvement programs that are so necessary for the older rail systems.

For several years the existing eight rail cities have been receiving less than their proportionate share of bus funds under the discretionary program. In the history of Federal funding these cities have received 26 percent of all bus funding. Yet they account for 56 percent of all of the urban bus passenger trips. I would like you to assess this program and report back to me or the committee on how UMTA plans to deal with this inequity.

Mr. STANLEY. I will do that.

Senator D'AMATO. Mr. Chairman, I have many pages of questions for Mr. Stanley, given the very critical dimensions that mass transportation, including bus, rail, and subway, have on New York; however, I believe we have touched on some of our major concerns.

I have some questions dealing with UMTA staffing. I believe there are a number of vacant staff positions from the Office of Civil Rights right on down to the field offices which should be filled promptly; especially, given UMTA's increased workload. Some of my questions concern your future plans with respect to staffing, and there are a number of technical questions.

In the interest of brevity, I wonder if I may submit these questions for the record and ask Mr. Stanley to respond as expeditiously as possible.

I would like to say for the record that as a result of my discussions with Mr. Stanley and my conversations with those who know him well, I am assured of his knowledge, integrity, and commitment to the Department of Transportation and urban mass transit.

Thus, I heartily endorse his candidacy for the position of UMTA Administrator.

Mr. STANLEY. Thank you.

The CHAIRMAN. Thank you, Senator D'Amato.

We will submit these questions to you, Mr. Stanley.

We are hoping to close the Congress a week from Friday. I don't know whether we can or not with all the roadblocks we seem to have run into in the last day or two. For the good of the country I hope that we can shut down by a week from Friday and everybody will be able to enjoy Christmas and Thanksgiving safe in their beds knowing that the legislative body is out of session. [Laughter.]

I am really only quoting Will Rogers there, a much wiser man than I, who said something, and I paraphrased it, like when the legislature is in session the country is in danger and the people are in danger.

Hopefully we are not going to be in session very long. So we would appreciate an answer to these questions just as soon as possible so we can complete the record and hopefully consider your nomination before we adjourn.

Mr. STANLEY. Thank you very much. I will answer those as quickly as I can.

The CHAIRMAN. Thank you.

The committee is adjourned.

[Whereupon at 2:37 p.m. the committee was adjourned.]

[Response to written questions from the committee and biographical sketch of nominee follows:]

RESPONSE TO WRITTEN QUESTIONS OF SENATOR HEINZ

OPERATING ASSISTANCE

Senator Heinz: What is your plan for continuing the operating subsidies program in light of administration interest in reducing and ultimately eliminating such subsidies to transit authorities?

Response:

1. Congress has not accepted the Administration's proposal to ultimately phase-out Federal operating assistance. Congress has embraced, however, the idea of reduced funding for operating assistance from FY 1982 levels by placing limitations on operating assistance that vary by city size. These limitations were contained in the STA Act of 1982, and apply only to urbanized areas with populations of more than 50,000. No limitations were placed on the use of Formula Funds for operating assistance by nonurbanized areas. Consistent with the provisions of the STA Act of 1982 and the funding made available in the FY 1984 DOT Appropriations Act, the Administration is making operating assistance available in FY 1984.

2. We are fully aware of concern by Congress, transit operators and others about the pace of the reduction in Federal operating assistance and of the effect of these reductions on small transit operators. It is our intention to assure that this history is fully understood within the Administration and OMB. Thus, in developing our FY 1985 Budget, we will take these concerns into account.

HANDICAPPED REGULATIONS (SECTION 504)

Senator Heinz: Would it be your plan to undertake further research before setting final requirements on levels of expenditure for paratransit services for the elderly and handicapped?

Response: In the recently issued NPRM for section 504, the Department proposed two cost caps beyond which an UMTA recipient would not have to spend on transportation for elderly and handicapped persons in order to comply with the proposed requirements. The cost caps are based on data from the special service provided in Milwaukee, Wisconsin. The Department, however, is reviewing the services provided in other urban areas to determine what expenditures are involved. Before the Department issues a final rule, it will have the benefit of this research as well as cost data supplied by comments to the docket.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR HEINZ
13(c)

Senator Heinz: Would it be your intent, as a participant in any future negotiations between the Department of Transportation and the Department of Labor concerning § 13(c) of the Urban Mass Transportation Act (UMTA), to assure transit workers the right to collective bargaining, provided as a trade-off for no strike provisions, regardless of when the various complements of employees were hired, which policy would apparently be restricted by proposed reg. 215.7(d)?

Response: Proposed Section 215.7(d) was drafted to meet the objection to the present 13(c) process which produces open ended agreements with respect to a project with no termination date. The agreement is alive even though the project facilities and equipment are no longer in being or the original employees affected have left the grantee. This uncertainty causes many grantees hardship in assessing their potential obligations or liability under a 13(c) agreement. The basic intent of § 13(c) was to provide protections for employees from effects that may result from a particular project and not to establish rights that have no relation to the project or its affects on employees. If negotiations continue between the Department of Transportation and the Department of Labor, I would continue to press for some sort of standard for the life of the 13(c) agreement.

Regarding collective bargaining as a trade-off for a no strike provision, I would instead support a provision for a disputes resolution process. The right to strike by public employees is not provided for under many State laws. I believe that with a dispute resolution process the right to strike is not crucial to a union or employee organization in advocating its position. There have been recent court cases affirming effective disputes resolution processes short of the right to strike which appear workable, and which I would support. These processes involve a form of arbitration.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR HEINZ

13(c)

Senator Heinz: With further reference to § 13(c) of UMTA, please comment on why proposed regulation sections 215.4(d), (e) and (f) were prepared and why the elimination of binding arbitration unless contained in the existing collective bargaining agreements was included in view of the Congressional intent of a binding dispute resolution method in the absence of a right to strike. Do you support this restriction on the arbitration provision?

Response: Section 215.4(d),(e), and (f) were proposed to meet the concerns that the 13(c) process as it is being administered, permits the representatives of employees in negotiating a 13(c) agreement to bargain by placing "on the table" virtually any matter desired. These matters often exceed the scope of those listed in Section 13(c) and are remote to the concept of mitigating a potential adverse effect of a proposed project. Often the proposals are made at a time and in such a way that management feels constrained because of pressure to get a Federal grant or fear that if delayed funds would be allocated elsewhere. In effect they believe there was a veto power over their project by organized labor. The proposed provision states the statutory requirements of a 13(c) agreement and expresses the willingness on the part of Department of Labor to certify agreements that meet these requirements of the statute.

Binding interest arbitration is not a requirement of 13(c) and thus was not listed as one of the requirements necessary to valid a 13(c) agreement. However, collective bargaining to be meaningful must have room for the opportunity to strike or to effectively resolve disputes by some other means. In many States the right to strike by public employees is prohibited and thus the need for a disputes resolution process. Binding interest arbitration is not always effective in public situations in that the arbitrator has no requirements or considerations that must be evaluated in rendering a decision. Various States have laws or procedures which require the arbitrator to consider certain things in making his award, such as the ability to pay, economic conditions and other factors. Several of these alternatives to the binding interest arbitration proposal have been upheld by the courts as satisfying 13(c). In those situations where the collective bargaining agreement (as opposed to the 13(c) agreement) has provisions for interest arbitration, it should be carried forward and recognized in the 13(c) agreement.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR D'AMATO

HANDICAPPED REGULATIONS (504)

Senator D'Amato: There are reports that several transit systems with lift equipped buses operating on regular routes have elected to remove or bolt the lift devices into place. How does such action comply with the existing interim rule's provision that transit operators cannot deny service to handicapped people using regular services?

Response: The interim final rule does not require UMTA recipients to equip their regular route buses with wheelchair lifts. Although purchasing such buses until one-half of a recipient's fixed route fleet is wheelchair accessible is one example of complying with the rules "special efforts" requirement, there are many other ways of complying. The regulation leaves it up to the recipient to decide locally how best to meet the "special efforts" requirements.

Given this approach, a recipient could decide that the best way to meet the transportation needs of the local elderly and handicapped persons is to provide paratransit service. Consequently, any existing wheelchair lifts on buses would not be needed. The interim final rule does not address whether recipients may remove or bolt in place these devices. Such an action, however, does not violate rule's prohibition on disparate treatment. Section 27,77(c) prohibits a recipient from denying, on the ground of handicap, "transportation service on the recipient's system of mass transportation for the general public to any handicapped person capable of using such service...."

For example, assume a recipient has decided to comply with the interim final rule's "special efforts" requirement by providing paratransit service to wheelchair users and semiambulatory persons. Although the recipient has some wheelchair lift equipped buses, the lifts are not used since they are not needed in order to comply with the "special efforts" requirement. As long as the paratransit service is provided, the recipient can deny access to its fixed route buses to wheelchair users even though the lifts are still in place.

This recipient, however, could not deny the use of its fixed route buses to a handicapped person who is deaf. This person does not need a wheelchair lift to use the bus and is, therefore, capable of using the bus whether the lift is not operable. If the recipient were to deny access to this person it would be violating the regulations' prohibition on disparate treatment since it would be denying the use of its regular system of mass transportation based only on the gounds of handicap.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR D'AMATO

HANDICAPPED REGULATIONS (SECTION 504)

Senator D'Amato: The existing interim rule for accessibility requires UMTA grant recipients to sumbit certifications that special efforts are being made. What is UMTA doing to determine the legitimacy of these certifications?

Response: The Department issued the existing requirements concerning transportation for elderly and handicapped persons for UMTA recipients on July 20, 1981, as an interim final rule. The rule requires UMTA recipients to certify that "special efforts are being made in their service area to provide transportation that handicapped persons, including wheelchair users and semiambulatory persons, can use." UMTA does not look behind the certification once it is submitted. The regulation relies on complaints filed against recipients to ensure complaince.

Senator D'Amato: Have you tabulated the types of services being provided?

Response: UMTA has not tabulated the various types of "special efforts" that recipients are taking to comply with the section 504 regulation.

Senator D'Amato: What recourse or protest mechanism is available under the current rules to handicapped people?

Response: The current section 504 rule provides a complaint procedure in 49 CFR Part 27, Subpart 7. These provisions provide a detailed process by which members of the public, and specifically handicapped persons, can file a complaint with the Department alleging that a particular UMTA recipient is not complying with the regulation. The Department reviews all complaints, investigates those merting further action, and requires corrective action where needed.

Senator D'Amato: What mechanisms are in place for the handicapped community to participate in the final rulemaking?

Response: The Department has provided a public comment period to enable handicapped persons to participate in the section 504 rulemaking. Although the Department initially provided a 60-day comment period, the Secretary extended it for an additional 30-days. The comment period will now close on December 8, 1983. In addition, the Department provides tapes of the NPRM for the use of visually- impaired persons, and hearing-impaired persons can contact the Department by using a special TTY number. Moreover, when the rule was published the Department met with a number of representatives of organizations for the handicapped and advised them of the details of the rulemaking proposal. A number of other informal meetings with representatives of the handicapped have been held.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR D'AMATO

HANDICAPPED REGULATIONS (SECTION 504)

Senator D'Amato: Secretary Dole has announced the extension of the comment and review period for the new section 504 handicapped regulations. What is your view of the adequacy of these regulations as published?

Response: On October 31, 1983, Secretary Dole extended the review and comment period for the section 504 notice of proposed rulemaking (NPRM) for an additional 30 days. The review and comment period will now end on December 8, 1983.

The Department published this NPRM on September 8, 1983. Section 317(c) of the Surface Transportation Assistance Act of 1982 required the Department to issue this NPRM and the ensuing final rule. In addition, section 317(c) specifically requires the rule to 1) establish minimum criteria, that UMTA recipients must meet, for the provision of transportation services to elderly and handicapped persons; 2) establish procedures for DOT to monitor recipients' compliance; and 3) ensure that elderly and handicapped persons, and organizations representing them, have an opportunity to comment on a recipient's compliance plan.

The NPRM addresses these three areas with specific provisions that, if implemented, would make clear the responsibility of UMTA's recipients to provide mass transportation services for elderly and handicapped persons. The NPRM, however, tries to balance the need for the provision of this service with the cost that is required to provide it. Although the Department is concerned with the transportation needs of elderly and handicapped persons, we realize that we can not require burdensome financial expenditures by UMTA's recipients.

I believe the NPRM is an attempt to strike a balance between these competing needs while providing the flexibility at the local level to determine the exact outlines of what the service will be. The Department looks forward to receiving comments on the NPRM which will enable us to develop as responsive a final rule as possible.

Senator D'Amato: What steps are you taking with the proposed rules to ensure that these actions do not continue?

Response: The NPRM does not contain any provisions that would require UMTA recipients to operate wheelchair lifts on its fixed route buses. Providing and using these devices is one proposal for compliance, but it is not the only way. Under the NPRM, a recipient could provide paratransit service and not use, or remove, wheelchair lifts on its fixed route uses. The decision of which compliance approach to select would be left up to the recipient to be made in consultation with local elderly and handicapped persons, and groups representing them.

25-561 O - 84 - 5

RESPONSE TO WRITTEN QUESTIONS OF SENATOR D'AMATO

HANDICAPPED REGULATIONS (SECTION 504)

Senator D'Amato: How can such action be justified from a Federal capital investment viewpoint?

Response: As long as the recipient is in compliance with the existing interim rule, the Department can not mandate that the wheelchair lifts be used. Such a requirement would be contrary to the decision in American Public Transit Association v. Lewis, 655 F.2d 1272 (D.C. Cir. 1981) and contrary to the Administration's philosphy that the local transit authority, and not the Federal government, should decide what types of transportation service should be provided for elderly and handicapped persons.

In APTA v. Lewis, the Court held that the mass transportation requirements in the section 504 rule that the Department issued in 1979 were too costly and burdensome and beyond the scope of what section 504 permits. That rule required UMTA recipients to make their fixed route transportation accessible to handicapped persons. One way to comply with that requirement for fixed route buses was to equip the buses wih wheelchair lifts. The Court's decision meant that such devices could not be required.

Before the Court issued its decision in APTA v. Lewis, many recipients had purchased wheelchair lift equipped buses. In most of these cases, if not all, UMTA had participated in funding the cost of the lifts.

In July 1981, the Department issued the existing section 504 interim final rule to replace the regulation struck down in the APTA decision. The interim final rule permits recipients to decide locally what transportation services to provide to best meet the needs of elderly and handicapped persons. To comply with this, recipients can provide accessible fixed route service, paratransit service or a variety of other types of service. This means potentially that UMTA-funded wheelchair lifts are not being used if a recipient provides, e.g., paratransit service rather than fixed-route accessible service.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR D'AMATO

MISCELLANEOUS

Senator D'Amato: Identify those areas out of compliance with section 504 regulations and Title VI of the Civil Rights Act?

Response: At this time, there are no UMTA recipients who are out of compliance with the section 504 regulation and Title VI of the Civil Rights Act.

Senator D'Amato: List all safe harbor leasing transactions approved by UMTA Regional Offices through 1983, the type of equipment being leased, the amount of the transactions, the net percentage paid to the transit agencies by the buyers, and the net percentage fees charged by the buyers?

Response: A list of safe harbor lease transactions is attached.

SAFE HARBOR LEASING

A summary of safe harbor lease transactions involving UMTA-funded equipment is set forth below. The information was provided by the affected transit systems.

MBTA (Boston)

Date of transaction:	December 31, 1981
Equipment:	100 heavy rail cars
Amount earned:	$2,908,064.12
Transaction cost:	$156,298.78
Intended use of funds:	reduced operating cost deficit
Total equipment cost:	$59,650,600
Local share leased:	20 percent

New Jersey Transit

Date of transaction:	December 31, 1981
Equipment:	244 new advance design buses 39 used long haul buses 26 electric rail cars 6 diesel locomotives
Amount earned:	$1,958,936.86
Transaction cost:	$124,191.16
Intended use of funds:	capital projects related to maintenance of rolling stock
Total equipment cost:	$67,600,000
Local share leased:	20 percent

SEPTA (Philadelphia)

Date of transaction:	December 31, 1981
Equipment:	65 light rail vehicles
Amount earned:	$1,473,857
Transaction cost:	$212,000
Intended use of funds:	capital projects
Total equipment cost:	$36,836,420
Local share leased:	20 percent

SCRTD (Los Angeles)

Date of transaction:	December 31, 1981
Equipment:	770 GM RTS II buses
Amount earned:	$3,872,314
Transaction cost:	$42,000
Intended use of funds:	no decision has been made
Total equipment cost:	$119,148,137
Local share leased:	20 percent

Cincinnati

Date of transaction:	December 31, 1981
Equipment:	87 lift equipped buses
Amount earned:	$312,769
Transaction cost:	$90,001
Intended use of funds:	transit system operations and equipment
Total equipment cost:	$11,837,228
Local share leased:	20 percent

Worcester Regional Transit Authority

Date of transaction:	December 30, 1981
Equipment:	19 GMC T70604 coaches
Amount earned:	$54,754.40
Transaction cost:	$16,975.40
Intended use of funds:	reduce principal on renewal of bond anticipation note
Total equipment cost:	$2,737,722
Local share leased:	20 percent

RIPTA (Providence)

Date of transaction:	December 30, 1981
Equipment:	34 buses
Amount earned:	$96,541.62
Transaction cost:	$34,654.19
Intended use of funds:	no decision has been made
Total equipment cost:	$4,776,057
Local share leased:	20 percent

25-561 O - 84 - 6

TARC (Louisville)

Date of transaction:	February 25, 1982
Equipment:	77 buses
Amount earned:	$305,843
Transaction cost:	$55,000
Intended use of funds:	help to finance overall system costs
Total equipment cost:	
Local share leased:	

BI-State (St. Louis)

Date of transaction:	February 26, 1982
Equipment:	156 buses
Amount earned:	$591,772.95
Transaction cost:	$45,000
Intended use of funds:	capital projects
Total equipment cost:	$20,060,000
Local share leased:	20 percent

AC Transit (Oakland)

Date of transaction:	February 26, 1982
Equipment:	161 forty-foot flyer buses
Amount earned:	$718,217.92
Transaction cost:	$16,183.56
Intended use of funds:	capital improvements to existing bus operating and maintenance facilities
Total equipment cost:	$20,595,894
Local share leased:	20 percent (10 at 100 percent)

Tucson

Date of transaction:	February 26, 1982
Equipment:	19 buses
Amount earned:	$63,717.95
Transaction cost:	$9,765 (paid for lessor)
Intended use of funds:	general system costs
Total equipment cost:	
Local share leased:	

NYC DOT

Date of transaction:	March 1, 1982
Equipment:	1 ferry boat
Amount earned:	$630.037.23
Transaction cost:	approx. $39,000
Intended use of funds:	additional transportation needs - no final determination
Total equipment cost:	$15,500,000
Local share leased:	20 percent

Santa Clara

Date of transaction:	March 31, 1982
Equipment:	219 Grumman Flexible buses - new 51 GMC buses - rehabilitated
Amount earned:	$1,130,203.98
Transaction cost:	$99,742.31
Intended use of funds:	construction of Guadeloupe Corridor (probably on purchase of right-of-way)
Total equipment cost:	$9,418,366
Local share leased:	20 percent (51 at 100 percent)

MTA (Houston)

Date of transaction:	April 27, 1982
Equipment:	195 buses
Amount earned:	$475,579.97
Transaction cost:	$5,000
Intended use of funds:	amount earned used for vehicle acquisition
Total equipment cost:	$22,744,160
Local share leased:	only 10 percent (because of tax exempt requirement)

New Jersey Transit

Date of transaction:	June 10, 1982
Equipment:	23 new AD buses; 24 electric M-V rail cars; 2 new F 40 PH diesel locomotives
Amount earned:	$1,094,505
Transaction cost:	approximately $87,500
Intended use of funds:	upgrade, rehabilitate and improve efficiency of rolling stock and rolling stock facilities
Total equipment	$27,563,636
Local share leased:	20 percent

New Jersey Transit

Date of transaction:	June 15, 1982
Equipment:	6 new Comet II passenger rail cars and 9 ARROW III electronic rail cars
Amount earned:	$488,719
Transaction cost:	$12,417 (legal fees included in June 10 transaction)
Intended use of funds:	upgrade, rehabilitate and improve efficiency of rolling stock and rolling stock facilities
Total equipment cost:	$12,836,364
Local share leased:	20 percent

NYC DOT

Date of transaction:	July 28, 1982
Equipment:	one ferry boat
Amount earned:	$697,177
Transaction cost:	approximately $50,000 (investment advisors); approximately $75,000 (tax counsel) (costs cumulative with February 1981 lease of another ferry boat)
Intended use of funds:	fund additional transportation needs
Total equipment cost:	$15,500,000
Local share leased:	20 percent

TARC (Louisville)

Date of transaction:	August 16, 1982
Equipment:	13 Blue Bird buses
Amount earned:	$31,590
Transaction cost:	N.A.
Intended use of funds:	upgrade and improve transit system
Total equipment cost:	$293,774
Local share leased:	20 percent

Tri-Met (Portland)

Date of transaction:	December 16, 1982
Equipment:	87 articulated buses; 75 ADBs; 19 renovated buses; 10 lifts
Amount earned:	$908,562
Transaction cost:	$43,225 (investment advisors); $26,000 (tax counsel)
Intended use of funds:	Capital requirement
Total equipment cost:	$33,081,005
Local share leased:	20 percent

Pioneer Valley (RTA) (Springfield, Mass.)

Date of transaction:	December 20, 1982
Equipment:	21 buses
Amount earned:	$47,506
Transaction cost:	$11,876 (legal)
Intended use of funds:	Reduce operating expenses
Total equipment cost:	$3,125,413
Local share leased:	20 percent

Montachusett (RTA) (Mass.)

Date of transaction:	December 20, 1982
Equipment:	3 buses
Amount earned:	15,800
Transaction cost:	$3,200
Intended use of funds:	N.A.
Total equipment cost:	$367,528
Local share leased:	20 percent

Worcester RTA (Mass.)

Date of transaction:	December 20, 1982
Equipment:	4 buses
Amount earned:	$7,802
Transaction cost:	$1,560 (legal)
Intended use of funds:	capital account
Total equipment cost:	$433,417
Local share leased:	20 percent

Denver RTD

Date of transaction:	December 30, 1982
Equipment:	127 buses; 13 shuttle vehicles
Amount earned:	413,293
Transaction cost:	$37,076
Intended use of funds:	for capital program
Total equipment cost:	$18,644,651
Local share leased:	20 percent

Miami Valley RTA (Dayton, Ohio)

Date of transaction:	December 30, 1982
Equipment:	76 buses
Amount earned:	$259,927
Transaction cost:	$117,015
Intended use of funds:	for capital improvements
Total equipment cost:	$10,963,481
Local share leased:	20 percent

Maryland DOT

Date of transaction:	December 30, 1982
Equipment:	81 buses
Amount earned:	$300,875
Transaction cost:	$85,774 (not including in-house legal costs)
Intended use of funds:	trust fund revenue
Total equipment cost:	$11,724,160
Local share leased:	20 percent

RGRTA (New York)

Date of transaction:	December 22, 1982
Equipment:	59 GMC buses
Amount earned:	$226,734
Transaction cost:	$13,000
Intended use of funds:	to fund additional capital needs
Total equipment cost:	$8,610,165
Local share leased:	20 percent

CNYRTA (New York)

Date of transaction:	December 22, 1982
Equipment:	25 buses
Amount earned:	$78,492
Transaction cost:	$2,918
Intended use of funds:	to fund capital needs
Total equipment cost:	$3,225,725
Local share leased:	20 percent

Broome County (New York)

Date of transaction:	December 22, 1982
Equipment:	17 buses
Amount earned:	$74,995
Transaction cost:	$2,788
Intended use of funds:	unidentified
Total equipment cost:	$2,500,383
Local share leased:	20 percent

Suffolk County (New York)

Date of transaction:	December 22, 1982
Equipment:	57 buses
Amount earned:	$184,643
Transaction cost:	$6,865
Intended use of funds:	unidentified
Total equipment cost:	$7,118,485
Local share leased:	20 percent

New Jersey Transit

Date of transaction:	December 30, 1982
Equipment:	49 MCI buses, 19 long-haul buses, 2 rail cars, 7 locomotives
Amount earned:	$511,735
Transaction cost:	$17,444 (legal counsel), $12,793 (investment broker)
Intended use of funds:	to fund budget for 1983
Total equipment cost:	$19,400,000
Local share leased:	20 percent

CTA (Chicago)

Date of transaction:	December 23, 1982
Equipment:	4 buses; 19 e&h buses; 98 Budd rail cars (four separate transactions)
Amount earned:	$2,173,558
Transaction cost:	$54,758 (financial); legal (N.A.)
Intended use of funds:	fund additional transportation needs
Total equipment cost:	$56,420,931
Local share leased:	20 percent

Fort Wayne PTC

Date of transaction:	December 30, 1982
Equipment:	28 transit buses
Amount earned:	$85,643
Transaction cost:	$2,000
Intended use of funds:	operating costs
Total equipment cost:	$4,032,000
Local share leased:	20 percent

Milwaukee County

Date of transaction:	December 29, 1982
Equipment:	44 buses
Amount earned:	$141,605
Transaction cost:	$2,900 (development) $3,100 legal and financial)
Intended use of funds:	Transit related projects
Total equipment cost:	$5,518,121
Local share leased:	20 percent

TANK (Kentucky)

Date of transaction:	December 30, 1982
Equipment:	10 buses
Amount earned:	$27,880
Transaction cost:	$8,460
Intended use of funds:	operating costs
Total equipment cost:	$1,338,250
Local share leased:	20 percent

MBTA (Boston)

Date of transaction:	December 31, 1982
Equipment:	31 rebuilt rail cars; 20 rail cars 167 buses
Amount earned:	$1,203,735
Transaction cost:	$154,100
Intended use of funds:	reduce expenses
Total equipment cost:	$102,570,537
Local share leased:	20 percent

MARTA (Atlanta)

Date of transaction:	February 3, 1983
Equipment:	46 buses
Amount earned:	$285,034
Transaction cost:	N.A.
Intended use of funds:	for capital purposes
Total equipment cost:	$2,192,576
Local share leased:	20 percent

Birmingham-Jefferson County Transit Authority (Alabama)

Date of transaction:	May 6, 1983
Equipment:	38 Flexible buses Medel 870
Amount earned:	$90,316
Transaction cost:	None
Intended use of funds:	Capital reserve account
Total equipment cost:	$903,167
Local share leased:	20 percent

Cleveland RTA

Date of transaction:	March 11, 1983
Equipment:	31 light rail vehicles
Amount earned:	$913,184
Transaction cost:	N.A.
Intended use of funds:	for capital improvement
Total equipment cost:	$27,456,915.45
Local share leased:	20 percent

SEPTA (Philadelphia)

Date of transaction:	March 3 and April 8, 1983
Equipment:	73 LRVs (street cars), 150 buses
Amount earned:	$1,950,908
Transaction cost:	estimate $65,000
Intended use of funds:	working capital
Total equipment cost:	
Local share leased:	

New Jersey Transit

Date of transaction:	May 1983
Equipment:	2F-40 locomotives 236 MCI buses 56 buses 104 Comet II rail cars
Amount earned:	
Transaction cost:	
Intended use of funds:	
Total equipment cost:	$125,800,000
Local share leased:	20 percent

NFTA (Buffalo)

Date of transaction:	November 30, 1983
Equipment:	110 buses
Amount earned:	
Transaction cost:	
Intended use of funds:	
Total equipment cost:	$17,262,000
Local share leased:	20 percent

AC Transit (Oakland)

Date of transaction:	June 1983
Equipment:	123 buses
Amount earned:	
Transaction cost:	
Intended use of funds:	
Total equipment cost:	$18,954,919
Local share leased:	20 percent

OCTD (Orange County)

Date of transaction:	September 2, 1983
Equipment:	105 buses
Amount earned:	
Transaction cost:	
Intended use of funds:	
Total equipment cost:	$163,611
Local share leased:	

SCRTD (Los Angeles)

Date of transaction:	June 16, 1983
Equipment:	35 buses
Amount earned:	
Transaction cost:	
Intended use of funds:	
Total equipment cost:	$5,667,935
Local share leased:	20 percent

Worcester Regional Transit Authority

Date of transaction:	September 30, 1983
Equipment:	22 buses
Amount earned:	$78,657
Transaction cost:	$10,000
Intended use of funds:	
Total equipment cost:	$3,184,500
Local share leased:	20 percent

OCTD (Orange County)

Date of transaction:	September 2, 1983
Equipment:	105 buses
Amount earned:	$1,405,906
Transaction cost:	$163,611
Intended use of funds:	
Total equipment cost:	$17,489,245
Local share leased:	20 percent (64 at 100 percent)

RGRTA (New York)

Date of transaction:	November 30, 1983
Equipment:	35 buses
Amount earned:	
Transaction cost:	
Intended use of funds:	
Total equipment cost:	$5,235,000
Local share leased:	20 percent

Municipality of Anchorage

Date of transaction:	April 22, 1983
Equipment:	38 buses
Amount earned:	$207,688
Transaction cost:	23,077 (broker) 7,582 (legal)
Intended use of funds:	capital requirement
Total equipment cost:	$4,969,725
Local share leased:	20 percent

C-TRAN (Vancouver)

Date of transaction:	April 15, 1983
Equipment:	34 ADBs and spare parts
Amount earned:	$106,607
Transaction cost:	$2,458
Intended use of funds:	capital needs
Total equipment cost:	$5,330,360
Local share leased:	20 percent

Intercity Tranist (Olympia)

Date of transaction:	August 24, 1983
Equipment:	15 standard buses
Amount earned:	$169,246
Transaction cost:	$32,294
Intended use of funds:	capital needs
Total equipment cost:	$2,190,150
Local share leased:	20 percent

Municipality of Metropolitan Seattle

Date of transaction:	June 24, 1983
Equipment:	164 articulated buses
Amount earned:	$956,708
Transaction cost:	$59,794 (broker) $15,000 (legal)
Intended use of funds:	capital needs
Total equipment cost:	$42,503,800
Local share leased:	20 percent

Municipality of Metropolitan Seattle

Date of transaction:	August 12, 1983
Equipment:	37 articulated buses
Amount earned:	$276,946
Transaction cost:	$14,325 (broker) $8,000 (legal)
Intended use of funds:	capital needs
Total equipment cost:	$9,709,780
Local share leased:	20 percent

Spokane Transit Authority

Date of transaction:	October 27, 1983
Equipment:	40 ADBs
Amount earned:	$172,805
Transaction cost:	$27,376
Intended use of funds:	capital needs
Total equipment cost:	$6,628,826
Local share leased:	20 percent

Muskegon Area Transit System

Date of transaction:	October 29, 1982
Equipment:	13 buses
Amount earned:	$27,820
Transaction cost:	none (in-house)
Intended use of funds:	capital improvement
Total equipment cost:	$1,384,877
Local share leased:	20 percent

Columbus Ohio Transit Authority

Date of transaction:	March 31, 1983
Equipment:	85 buses
Amount earned:	$283,388.52
Transaction cost:	$7,500
Intended use of funds:	capital reserve
Total equipment cost:	$12,863,025
Local share leased:	20 percent

Date of transaction:	July 1, 1983
Equipment:	99 buses
Amount earned:	$251,539.74
Transaction cost:	$7,500
Intended use of funds:	capital reserve
Total equipment cost:	$13,042,260
Local share leased:	20 percent

Utah Transit Authority (Salt Lake City)

Date of transaction:	May 6, 1983
Equipment:	50 buses
Amount earned:	$111,413
Transaction cost:	$3,585
Intended use of funds:	bus acquisition & capital investment
Total equipment cost:	$6,040,733
Local share leased:	20 percent

MTA (Houston)

Date of transaction:	December 1981
Equipment:	8 new buses, 93 remanufactured buses
Amount earned:	
Transaction cost:	
Intended use of funds:	
Total equipment cost:	$8,591,474
Local share leased:	only 10 percent (because of tax exempt requirement)

MTA (Houston)

Date of transaction:	December 1983
Equipment:	150 new buses, 97 remanufactured buses
Amount earned:	
Transaction cost:	
Intended use of funds:	
Total equipment cost:	$31,165,836
Local share leased:	only 10 percent (because of tax exempt requirement)

City of Nashville

Date of transaction:	September 12, 1983
Equipment:	15 articulated buses
Amount earned:	$101,500
Transaction cost:	$650 - grantee all other costs by lessor
Intended use of funds:	operating budget
Total equipment cost:	$1,060,497.40
Local share leased:	20 percent

Port Authority of Allegheny County (Pittsburgh)

Date of transaction:	November 4, 1983
Equipment:	30 articulated buses and 12 commuter rail vehicles
Amount earned:	$245,163
Transaction cost:	$26,000 (approximately)
Intended use of funds:	miscellaneous revenues
Total equipment cost:	$13,482,564
Local share leased:	20 percent

Maryland Department of Transportation

Date of transaction:	June 30, 1983
Equipment:	Commuter rail vehicles
Amount earned:	$199,473,064
Transaction cost:	$74,000 (Amount paid to third parties for arranging the lease transaction)
Intended use of funds:	capital improvements
Total equipment cost:	$6,671,175
Local share leased:	20 percent

SEPTA (Philadelphia)

Date of transaction:	March 31 and April 8, 1983
Equipment:	73 light rail vehicles (street cars) and 150 buses
Amount earned:	$1,950,908.47
Transaction cost:	(estimated) $65,000
Intended use of funds:	working capital
Total equipment cost:	$63,214,090
Local share leased:	20 percent

Penn DOT

Date of transaction:	June 30, 1983
Equipment:	3 Advanced Design Transit Buses
Amount earned:	$10,646.89
Transaction cost:	Total $2,326.17
Intended use of funds:	operating assistance, capital improvements or other special purpose use.
Total equipment cost:	$498,275
Local share leased:	20 percent

Penn DOT

Date of transaction:	June 30, 1983
Equipment:	5 Advanced design transit buses
Amount earned:	$16,467.62
Transaciton cost:	Total $3,543.23
Intended use of funds:	operating assistance, capital improvements or other special purpose use.
Total equipment cost:	$751,732
Local share leased:	20 percent

Penn DOT

Date of transaction:	June 30, 1983
Equipment:	185 Advanced Design Transit Buses
Amount earned:	$626,052.56
Transaction cost:	Total $131,001.90
Intended use of funds:	operating assistance, capital improvements or other special purpose use.
Total equipment cost:	$28,759,129
Local share leased:	20 percent

Penn DOT

Date of transaction:	June 30, 1983
Equipment:	12 Advanced Design Transit Buses
Amount earned:	$39,044.15
Transaction cost:	Total $8,263.78
Intended use of funds:	operating assistance, capital improvements or other special purpose use.
Total equipment cost:	$1,852,706
Local share leased:	20 percent

Penn DOT

Date of transaction:	June 30, 1983
Equipment:	4 Advanced Design Transit Buses
Amount earned:	$13,266.23
Transaction cost:	Total $2,873.84
Intended use of funds:	operating assistance, capital improvements or other special purpose use.
Total equipment cost:	$625,083
Local share leased:	20 percent

Penn DOT

Date of transaction:	June 30, 1983
Equipment:	7 Advanced Design Transit Buses
Amount earned:	$23,366.32
Transaction cost:	Total $4,985.69
Intended use of funds:	operating assistance, capital improvements or other special use.
Total equipment cost:	$1,067,957
Local share leased:	20 percent

Penn DOT

Date of transaction:	June 30, 1983
Equipment:	18 Advanced Design Transit Buses
Amount earned:	$58,523.09
Transaction cost:	Total $12,336.65
Intended use of funds:	operating assistance, capital improvements or other special purpose use.
Total equipment cost:	$2,710,998
Local share leased:	20 percent

Penn DOT

Date of transaction:	June 30, 1983
Equipment:	10 Advanced Design Transit Buses
Amount earned:	$33,818.27
Transaction cost:	Total $7,171.09
Intended use of funds:	operating assistance, capital improvements or other special purpose use.
Total equipment cost:	$1,588,613
Local share leased:	20 percent

Penn DOT

Date of transaction:	June 30, 1983
Equipment:	4 Advanced Design Transit Buses
Amount earned:	$12,931.43
Transaction cost:	Total $2,803.85
Intended use of funds:	operating assitance, capital improvements or other special purpose use.
Total equipment cost:	$592,300
Local share leased:	20 percent

Penn DOT

Date of transaction:	June 30, 1983
Equipment:	11 Advanced Design Transit Buses
Amount earned:	$39,489.10
Transaction cost:	Total $8,356.81
Intended use of funds:	operating assistance, capital improvements or other special purpose use.
Total equipment cost:	$1,816,786
Local share leased:	20 percent

Penn DOT

Date of transaction:	June 30, 1983
Equipment:	5 Advanced Design Transit Buses
Amount earned:	$16,562.59
Transaction cost:	Total $3,563.08
Intended use of funds:	operating assistance, capital improvements or other special purpose use.
Total equipment cost:	$764,812
Local share leased:	20 percent

Penn DOT

Date of transaction:	June 30, 1983
Equipment:	4 Advanced Design Buses
Amount earned:	$12,701.39
Transaction cost:	Total $2,755.74
Intended use of funds:	operating assistance, capital improvements or other special purpose use.
Total equipment cost:	$592.856
Local share leased:	20 percent

Penn DOT

Date of transaction:	June 30, 1983
Equipment:	12 Advanced Design Transit Buses
Amount earned:	$40,555.83
Transaction cost:	Total $8,579.86
Intended use of funds:	operating assistance, capital improvements or other special purpose use.
Total equipment cost:	$1,868,283
Local share leased:	20 percent

City of Charlotte, N.C.

Date of transaction:	June 2, 1983
Equipment:	42 Grumman Flxible
Amount earned:	$138,602
Transaction cost:	
Intended use of funds:	General fund/reseved for Council action
Total equipment cost:	$5,978,553.84
Local share leased:	20 percent

Transit Authority of Northern Kentucky ("TANK")

Date of transaction:	June 27, 1983
Equipment:	10 transit buses
Amount earned:	$31,928.00 (12.00 percent)
Transaction cost:	$4,738.00
Intended use of funds:	operating expenses
Total equipment cost:	$1,295,840
Local share leased:	20 percent

U.S. Department of Transportation
Urban Mass Transportation Administration

The Administrator

400 Seventh St., S.W.
Washington, D.C. 20590

DEC 16 1983

The Honorable Jake Garn
Chairman, Committee on Banking,
Housing and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In response to specific inquiries at my confirmation hearing regarding bus funding for the eight major rail cities, I am furnishing some additional data that I believe the Committee will find useful. The enclosed tables provide a historical trend of bus funding for the eight rail modernization cities between 1978 and 1983 and also identify the FY 1984 Section 9 formula funding for the rail cities.

The pattern of Section 3 bus funding indicates a steady increase during this time period both in absolute and relative terms. Also, Section 5 (Tier IV) funds have been available to accommodate bus capital needs during the past five years and have been utilized in addition to the Section 3 discretionary funds. In FY 1983, the eight rail modernization cities received over 34 percent of all bus capital funds that were available. Beginning in FY 1984, the new Section 9 formula grants program provides funds for routine bus needs and, consequently, less discretionary funds are required. The eight major rail cities will receive almost one-half of the total apportionment of the FY 1984 Section 9 funds. In the past several years, the importance of Section 3 funding for bus capital needs has been reduced as the amount of formula funds has simultaneously expanded.

I hope this information clarifies further the source and level of bus funding for the eight major rail cities.

I have taken the liberty of sending a copy of this letter to Senator D'Amato due to his continuing interest in this subject.

Sincerely,

Ralph L. Stanley

Ralph L. Stanley

2 Enclosures

cc: The Honorable Alfonse M. D'Amato

FY 1984
SECTION 9 FUNDING FOR
EIGHT MAJOR RAIL CITIES

Urbanized Area	Apportionment
New York NE New Jersey	601,097,531
Chicago	187,934,449
Philadelphia	107,840,673
Pittsburgh	33,352,480
Boston	54,419,579
Cleveland	29,922,502
San Francisco	100,109,692
TOTAL	1,114,676,906
Total Apportionment (To All UZAs)	2,388,592,200
Rail Cities Share of Total	46.7%

EIGHT MAJOR CITIES
BUS FUNDS RECEIVED (FY 1978-1982)
(in millions)

UZA	FY 1978 Section 3	FY 1979 Section 3	FY 1979 Section 5 (a)(4)	FY 1980 Section 3	FY 1980 Section 5(a)(4)	FY 1981 Section 3	FY 1981 Section 5(a)(4)	FY 1982 Section 3	FY 1982 Section 5(a)(4)	FY 1983 Section 3	FY 1983 Section 5(a)(4)
New York	$ 13.4	-0-	30.4	7.5	33.8	15.0	34.9	5.5	37.1	15.8	39.1
NE New Jersey	-0-	-0-	10.7	12.0	12.0	24.6	12.4	20.8	21.3	25.4	11.9
Chicago	19.4	-0-	10.9	-0-	15.4	12.0	22.0	14.1	19.5	24.9	19.2
Philadelphia	-0-	-0-	10.0	17.5	10.0	9.6*	11.6*	11.5*	10.0*	29.4*	11.1*
Pittsburgh	12.7	-0-	1.1	2.1	6.9	17.9*	4.7*	13.5*	4.1*	25.3*	3.9*
Boston	-0-	2.0	6.5	6.5	6.5	8.0	7.6	7.5	6.7	3.9	6.3
Cleveland	23.3	-0-	4.2	12.8	4.3	7.0	4.9	7.3	4.2	-0-	4.0
San Francisco	17.3	2.5	1.1	6.9	9.5	22.7	9.8	26.7	11.2	54.6	8.3
TOTALS	86.1	4.5	74.9	65.3	98.4	116.8	107.9	106.9	114.1	179.3	103.8
TOTAL BUS FUNDS APPROPRIATED	486.0	210.0	300.0	405.0	300.0	564.4	350.0	530.7	329.6	500.0	325.0

*INCLUDES SHARE OF THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION BUS PROCUREMENT PROGRAM.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Stanley (LAST) Ralph (FIRST) Leslie (OTHER)

Position to which nominated: Urban Mass Transportation Administrator Date of nomination:

Date of birth: 13 (DAY) 9 (MONTH) 51 (YEAR) Place of birth: Teaneck, New Jersey

Marital status: Married Full name of spouse: Colleen Mary Keegan

Name and ages of children: None

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Phillips Exeter Acad.	1969-1970	-	6/70
Princeton University	1970-1974	BA	6/74
Georgetown Law Center	1976-1979	LLB	9/79

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

None

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
D. C. Bar Association	None	1979 - Present
Cap & Gown Club - Social	None	1973 - Present

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

11/82-Present Dep. of Transpt., 400 7th St., SW-Wash., DC
Special Assistant/Chief of Staff

8/82-11/82 White House, 1600 Penn. Ave., Wash., DC
Comm. Consultant

3/81-Dept. of Transpt., 400 7th St., SW-Wash., DC
8/82 Special Assistant, Secretary Lewis

9/78-Bracewell & Patterson, 1850 K St., NW-Wash., DC
3/81 Thomas Manford, Lawyer

1/78-Loomis, Owen, Fellman, 2020 K St., NW-Wash., DC
9/78 Howe-Tim Ryan, Lawyer

10/77-Washington Monitor, Nat'l. Press Bldg., NW-Wash., DC
1/78 Tom Nelson, Salesman

1/77-NBC, Betty Dukert, Wash., DC, Asst. TV series
Producer

10/75-President Ford Comm., Wash., DC, Campaign Aide
12/76 Rob Quartel

6/75-Cowen-Ladd Tours, Milton, Mass., Tour Guide
9/75 Robby Browne

9/74-Bank of New York, New York, NY, Management Trainee
6/75 Rick Meyer

6/74-Cowen-Ladd, Milton, Mass., Tour Guide
8/74 Robby Browne

Government experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

1. Dept. of Transportation - Special Assistant
   3/81 8/82; 11/82 - Present

2. White House - Office of Public Affairs
   8/82 - 11/82

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

None

Political affiliations and activities: List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

1. President Ford Committee - 10/75 - 11/76 (Employee)
2. Reagan-Bush Committee - 8/80 - 11/80 (Volunteer)
3. Bush for President - 10/79 - 3/80 (Volunteer)

Political contributions: Itemize all political contributions of $500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

None

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet)

See Attachment 1

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes - as it applies to pre-1981 employers

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

No

3. Has anybody made you a commitment to a job after you leave government?

No

4. Do you expect to serve the full term for which you have been appointed?

Yes

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Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

MKM Ventures/Va. Partnership
806 Mt. Vernon Ave., Alexandria, Virginia

Corporate Video Services (TV Prod.)

East Fork
901 Oronoco St., Alexandria, Va. 22314 (private residence)
West Fork
Huntington Towers, Alexandria, Va. *

3. Describe any business relationship, dealing or financial transaction (other than tax-paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None

* These are real estate partnerships in three properties whose value will be affected by subway lines of WMATA. My interests were all obtained before going to work for the Department.

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

1979-1981: Represented the American Petroleum Refiners Association on various matters of interest to the small refining industry.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

No conflicts apparent related to mass transit.

See Attachment 2

Civil, criminal and investigatory actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

None

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None

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ATTACHMENT 1

Qualifications

From March 1981 until June 1982, I worked as Special Assistant for Policy at the Department of Transportation for former Secretary Drew Lewis. In that position, I coordinated a number of major policy initiatives for the Department, including quite a few issues related to the Urban Mass Transportation Administration (UMTA). From my position in the Secretary's office, I actively participated in the deliberations with the Administration, Congress and the interest groups that led to the ultimate passage of the STAA Act of 1982. In the course of that work, I came to know many of the staff members at UMTA and the interest groups affected by its activities, and that experience has provided me with the requisite background and understanding of the inter-relationships among UMTA, Congress, the Office of the Secretary and the Administration, which I think are necessary to serve as UMTA Administrator.

In addition, during my tenure as a lawyer in private practice, I did a good deal of work in federal administrative law, which has been of great benefit to me in public service.

In summary, I believe both my experience at the Department of Transportation for the past two years, and my legal training and public policy background qualify me to serve as Administrator of UMTA.

ATTACHMENT 2

September 21, 1983

To: Rosalind A. Knapp
Deputy General Counsel

In accordance with your review of my Public Financial Disclosure Report, this is to confirm that, because of my interest in real property on Mt.Vernon Ave. and Oronoco Street in Alexandria and in Huntington Towers in Alexandria, I will disqualify myself from participation in any particular matter concerning the extension of the Washington Metropolitan Area Transit Authority's Metrorail service into Alexandria or affecting the Braddock Road or Huntington Metrorail stations, which are in proximity to those properties.

I will distribute a copy of this disqualification to my staff.

Ralph L. Stanley

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